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(15,691.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 807.

P. J. BANNON AND C. J. MULKEY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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1 In the Supreme Court of the United States.

P. J. BANNON and C. J. MULKEY, Plaintiffs in Error, vs. THE UNITED STATES. } No. —. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the district court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said district court, before the Honorable Charles B. Billinger, one of you, between the United States, *is* plaintiff and defendant in error and P. J. Bannon and C. J. Mulkey, *are* defendants and plaintiffs in error, a manifest error hath happened to the great damage of the said plaintiffs in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, according to the laws and customs of the United States of America, should be done.

Witness the Hon. William W. Fuller, Chief Justice of the Supreme Court of the United States, this July 17, 1894.

[Seal United States Circuit Court, Oregon.]

J. A. SLADEN,
Clerk Circuit Court of the United States for the District of Oregon,
By R. B. LAMSON,
Deputy Clerk.

[Endorsed:] In the Supreme Court of the United States. C. J. Bannon and C. J. Mulkey *vs.* The United States. Writ of error. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

2 UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

To the United States of America and Daniel R. Murphy, United States attorney for the district of Oregon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington

within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein P. J. Bannon and C. J. Mulkey are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this July 17, 1894.

CHARLES B. BELLINGER,
United States District Judge for the District of Oregon.

DISTRICT OF OREGON, *ss:*

Due service of the within by copy is hereby admitted at Portland, Oregon, this 18th day of July, 1894.

CHAS. J. SCHNABEL,
Ass't U. S. Attorney, Dist. of Oregon.

[Endorsed:] No. 3594. U. S. district court, district of Oregon. United States *vs.* John Wilson, P. J. Bannon, & C. J. Mulkey *et al.* Citation on writ of error. Filed July 18, 1894. R. B. Lamson, clerk, by —— ——, deputy clerk.

3 In the District Court of the United States for the District of Oregon, November Term, 1893.

Be it remembered that on the 6th day of December, 1893, there was duly filed in the district court of the United States for the district of Oregon a- indictment in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WM. DUNBAR, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young.	Sec. 5440, R. S.

DISTRICT OF OREGON, *ss:*

The grand jurors of the United States of America, chosen, selected, and sworn within and for the district of Oregon, in the name and by the authority of the United States of America, upon their oaths do find and present:

That on the 1st day of July, 1892, the said John Wilson, N. Blum,

Wm. Dunbar, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley and Chas. Young, in the district of Oregon and within the jurisdiction of this court, did then and there amongst themseves, and with divers other evil disposed persons to the grand jury unknown, unlawfully, wilfully, knowingly, and maliciously conspire, combine, and confederate together and with each other to wilfully, knowingly, unlawfully, and maliciously commit an offense against the United States, to wit, the offense and misdemeanor of knowingly and unlawfully, aiding and abetting the landing in the United States and in the State of Oregon and in the district of Oregon and within the jurisdiction of this court, from a vessel, to wit, the steamship Wilmington and the steamship Haytian Republic, both
5 steamships plying between the port of Portland, Oregon, and Vancouver, in the Province of British Columbia, Dominion of Canada, Chinese persons, to wit, Chinese laborers not lawfully entitled to enter the United States, by furnishing said Chinese laborers false, fraudulent, and pretended evidences of identification, and by counselling, advising, and directing said Chinese laborers and furnishing them information and advice touching the questions liable to be asked them upon their application for admission to land from said vessels and by various other means, to the grand jury unknown, in violation of the provisions of the act of Congress, entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6, 1882, and of the act of Congress entitled "An act to amend an act entitled 'An act to execute certain treaty stipulations relating to Chinese,' approved May 6, 1882," approved July 5, 1884, and of the act of Congress entitled "An act a supplement to an act entitled An act to execute certain treaty stipulations relating to Chinese, approved the 6th day of May, 1882, approved Oct. 1, 1888," and an act to prohibit the coming of Chinese persons into the United States approved May 5, 1892," contrary to the statutes in such cases made and provided and against the peace and dignity of the United States; that from the 1st day of July, 1892, to the 14th day of June, 1893, P. J. Bannon and Glen O. Holman was each a notary public for the State of Oregon duly commissioned and sworn and had and used a notarial seal as provided by law.

That afterwards, to wit, on the 28th day of July, 1892, and on the 14th day of June, 1893, and at various other dates between said July 28th, 1892, and June 14th, 1893, in pursuance of such con-
6 spiracy, there was unlawfully brought from a foreign country, to wit, from the Province of British Columbia, in the Dominion of Canada, and in a certain steamship called the Haytian Republic into the United States and into the port of Portland, in the State of Oregon, and within the jurisdiction of this court, a large number of Chinese laborers whose names are to the grand jury unknown, and the number of which Chinese laborers is to the grand jury unknown, which said Chinese laborers were on the 28th day

of July, 1892, and on said 14th day of June, 1893, and on various other days between said July 28th, 1892, and said June 14, 1893, unlawfully landed from said vessel, the Haytian Republic, at said port of Portland in said district as aforesaid, none of said Chinese laborers having a right to land at said port of Portland or elsewhere within the United States, all of which facts were then and there well known to said John Wilson, N. Blum, Wm. Dunbar, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young.

That afterwards, to wit, on the 28th day of July, 1892, and on the 14th day of June, 1893, and at various other dates between said July 28th, 1892, and February 3rd, 1893, in pursuance of such conspiracy, there was unlawfully brought from a foreign country, to wit, from the province of British Columbia, in the Dominion of Canada, and in a certain steamship called the Wilmington into the United States and into the port of Portland, in the State of Oregon, and within the jurisdiction of this court, a large number of Chinese
7 laborers whose names are to the grand jury unknown and the number of which Chinese laborers is to the grand jury unknown; which said Chinese laborers were on the 28th day of July, 1892, and on said 3rd day of February, 1893, and on said various other days between said July 28th, 1892, and said February 3rd, 1893, unlawfully landed from said vessel, the Wilmington, at said port of Portland, in said district as aforesaid, none of said Chinese laborers having a right to land at said port of Portland or elsewhere within the United States; all of which facts were then and there well known to said John Wilson, N. Blum, Wm. Dunbar, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Wing Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the 5th day of December, 1892, in said State of Oregon, in the District of Oregon, and within the jurisdiction of this court, while said conspiracy existed and pursuant to said conspiracy and to accomplish, promote, and effect the object thereof, the said Glen O. Holman did wilfully, unlawfully, and knowingly make out and execute a large number of certificates, to wit, about forty-four certificates, the exact number being to the grand jury unknown, which certificates were in substance in words and figures as follows, to wit:

"To whom it may concern: We, the undersigned, residents of the city of Portland, State of Oregon, engaged in business in said city, do hereby certify, each for himself, that we and each of us are well and personally acquainted with one certain Chinese person,
8 known to us by the name of —— ——; that we have known said ——, —— for over —— years; that he is at present and

has been to our personal knowledge engaged in the business of —— in said city, at ——, for the period of —— years; that we have known him to be a *bona fide* —— and a member of the firm of ——, doing business at said place (No. and street above mentioned), and furthermore that he, the said —— ——, answers to the following description, to wit:

Occupation: ——.

STATE OF OREGON, }
County of Multnomah, } ss:

I, —— ——, a resident of Portland, Oregon, being first duly sworn, on oath depose and say that I am well, truly, and personally acquainted with —— ——, the Chinese person above described, and that I know him to be engaged in business as therein stated, and that the photograph attached hereto and having the seal of notary public for the State of Oregon stamped upon and through it is a true and genuine likeness of said —— ——, described in the above certificate.

—— ——.

Sworn to before me this — day of ——, 189–.

—— ——.

That said Glen O. Holman then and there, while said conspiracy existed, pursuant to said conspiracy and in order to accomplish, promote, and effect the object thereof, did sign his name to such certificates as notary public and did affix his notarial seal
9 thereto and did then and there deliver such certificates to said N. Blum in order that said N. Blum might fill out the blanks in said certificates and affix the names of witnesses thereto and deliver the same to such Chinese laborers as he might desire to have unlawfully enter the United States in pursuance of such conspiracy as aforesaid, the names of such Chinese persons being to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said N. Blum, in the said State of Oregon and district of Oregon and within the jurisdiction of this court, did thereupon fill out the blanks in such certificates and caused names to be signed thereto as witnesses and a photograph to be affixed thereto and did furnish such certificates so filled out and completed to such of said Chinese laborers not entitled to land in the United States as said N. Blum might desire to have landed from said steamship Wilmington or said steamship Haytian Republic, the names of such Chinese laborers being to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the 10th day of December, 1892, in said district of Oregon and within the jurisdiction of this court, while said conspiracy existed and pursuant to said conspiracy and to accomplish, promote, and effect the object thereof, the said Glen O. Holman did wilfully, unlawfully, and knowingly make out and execute a large number of said certificates, in words and figures as above

set out, to wit, about fifteen (15) of such certificates, the exact number being to the grand jury unknown, and did then and there, pursuant to such conspiracy, and in order to promote, accomplish, and effect the object thereof, sign his name to such certificate as
10 notary public and did deliver said certificates to said N. Blum and did then and there deliver into the possession of said N. Blum his, said Holman's, notarial seal in order that said N. Blum might fill out the blanks in such certificates and affix the names of witnesses thereto and affix said notarial seal to said certificates when so filled out and deliver the same to such Chinese laborers as he might desire to have unlawfully enter the United States in pursuance of such conspiracy as aforesaid, the names of which Chinese laborers are to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said N. Blum, in the said State of Oregon and district of Oregon and within the jurisdiction of this court, did thereupon fill out the blanks in such certificates and caused the names to be signed thereto as witnesses and a photograph to be affixed thereto and did furnish such certificates so filled out and completed to such said Chinese laborers not entitled to land in the United States as said N. Blum might desire to have landed from said steamship Wilmington or said steamship Haytian Republic, the names of which Chinese laborers are to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the 1st day of July, 1892, in the district of Oregon and within the jurisdiction of this court, while said conspiracy existed and pursuant to said conspiracy, and to accomplish, promote, and effect the object thereof, the said P. J. Bannon did wilfully, unlawfully, and knowingly make out and execute and have printed a large number of certificates, to wit, about five
11 hundred (500) of such certificates, the exact number of which certificates being to the grand jury unknown, which certificates are in words and figures substantially as follows, to wit:

STATE OF OREGON,)
County of Multnomah,) *ss*:

I, —— ——, being first duly sworn, depose and say that I am a merchant and one of the members of the firm of —— ——, Chinese merchants doing business as —— at No. — —— street, in the city of Portland, Multnomah county, State of Oregon, and have been a member of that firm for the period of — years and have resided within the United States for the period of — years; that I am about to depart from the United States on business in connection with my said firm and make this affidavit for the purpose of effecting my return.

—— ——.

Subscribed and sworn to before me this — day of ——, 189–.

—— ——,
Notary Public for Oregon.

STATE OF OREGON, } ss:
County of Multnomah, }

We, —— —— and —— ——, being severally duly sworn, each for himself deposes and says that I am a citizen of Portland, Multnomah county, Oregon, and know the said —— —— and believe him to *a* a man worthy of belief and know him to be a resident of said city of Portland and doing business as a merchant at No. — —— street, city of Portland, and member of —— Co.; that I recognize the annexed photograph, and that it is a good likeness of the said —— ——; that I understand the said —— —— is about
12 to depart from this city and country and make this affidavit for the purpose of assisting him to return hereto.

—— ——.
—— ——.

Subscribed and sworn to before me this — day of ——, 189–.

—— ——,
Notary Public for the State of Oregon.

That the said P. J. Bannon did then and there, pursuant to said conspiracy and in order to promote, effect, and accomplish the object thereof, sign his name to said certificates as notary public and affix his notarial seal thereto, and did then and there deliver such certificates to said N. Blum in order that said N. Blum might fill out the blanks in such certificates and affix the names of witnesses thereto and deliver the same to such Chinese laborers as he might desire to have unlawfully enter the United States in pursuance of such conspiracy aforesaid, the names of such Chinese laborers being to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said N. Blum, in the said State of Oregon and district of Oregon and within the jurisdiction of this court, did thereupon fill out the blanks in such certificates and cause names to be signed thereto as witnesses and a photograph to be affixed thereto, and did furnish said certificates so filled out and completed to such of said Chinese laborers not entitled to land in the United States as said N. Blum might desire to have landed from said steamship Wilmington or said steamship Haytian Republic, the names of which Chinese laborers are to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the 5th day of December, 1892, in the district of Oregon and within the jurisdiction of this court, while
13 said conspiracy existed and pursuant to said conspiracy and to accomplish, promote, and effect the object thereof, the said P. J. Bannon did wilfully, unlawfully, and knowingly make out and execute a large number of such certificates, to wit, about one hundred certificates, the exact number being to the grand jury unknown, in words and figures as hereinabove set out, and did then and there, pursuant to said conspiracy and in order to promote, effect, and accomplish the object thereof, sign his name to such certifi-

cates as notary public and affix his notarial seal thereto, and did then and there deliver such certificates to Wm. Dunbar in order that said Wm. Dunbar might deliver the same to John Ross and E. P. Thompson, to be taken to China and there filled out and delivered to such Chinese laborers as said Ross should desire to have unlawfully enter into the United States in pursuance of such conspiracy as aforesaid, the number and names of such Chinese laborers being to the grand jury unknown.

And the grand jurors aforesaid upon their oaths aforesaid do further present that said Wm. Dunbar, while said conspiracy existed and pursuant to said conspiracy and in order to promote and effect the object thereof, did, in the district of Oregon and within the jurisdiction of this court, on said 5th day of December, 1892, deliver said certificates so furnished him by said P. J. Bannon as aforesaid to said John Ross in order that said John Ross might take the same with him to China and fill out the blanks therein and affix the names of witnesses thereto and deliver the same to such Chinese laborers as he might desire to have unlawfully enter the United States in pursuance of such conspiracy as aforesaid, the number and names of which Chinese laborers are to the grand
14 jury unknown, contrary to the statutes in such cases made and provided and against the peace and dignity of the United States.

Dated at Portland, Oregon, Dec. 6th, 1893.

T. J. HARRIS,
Foreman of the Grand Jury.
DANIEL R. MURPHY,
United States Attorney for Oregon.

Witnesses sworn and examined before the grand jury:
Sig. Baer, N. Blum, T. J. Black, W. B. Jackling, Robert Garthorne, H. T. Berg, L. C. Sweeney, Mary Berg, Thomas Berg, E. E. Kellogg, E. W. Spencer, Alex. Young, Henry Christensen, Wm. Gemmell, F. W. Patterson, W. A. Eatchel, J. E. Weiter, Wm. Grant.

Endorsed: A true bill. T. J. Harris, foreman of the grand jury. Filed Dec. 6, 1893. R. B. Lamson, clerk.

15 And afterwards, to wit, on Wednesday, the 6th day of December, 1893, the same being the 27th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

16 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Chong Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young.	No. 3594. Indictment, Section 5440, R. S.

DECEMBER 6, 1893.

Now, at this day, comes into court the grand jury and, through its foreman, presents to the court an indictment charging the abovenamed John Wilson, N. Blum, William Dunbar, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young with the crime of conspiring to commit an offense against the United States, endorsed "a true bill," which indictment is received by the court and ordered to be filed; whereupon, on motion of Mr. Daniel R. Murphy, United States attorney, it was ordered that a bench warrant issue for the arrest of said defendants, with the following endorsement thereon: "The defendants are to be admitted to bail in the sum of one thousand dollars each." And thereupon, said plaintiff appearing by Mr. Daniel R. Murphy, United States attorney, and the defendants N. Blum and W. B. Jackling appearing each in his own proper person and by Mr. F. A. E. Starr, of counsel; the defendants William Dunbar, P. J. Bannon, J. E. Marks, and Thos. Jordan appearing each in his own proper person and by Mr. Henry E. McGinn, of counsel; the defendant John Ross appearing in his own proper person and by Mr. James Gleason, of counsel; the defendants Glen O. Holman and C. J. Mulkey appearing each in his own proper person and by Mr. C. H. Carey, of counsel; the defendant
17 James Lotan appearing in his own proper person and by Mr. W. L. Boise, of counsel, and the defendants Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by Mr. W. H. Adams, of counsel, and all of said defendants being duly arraigned upon the indictment herein, on motion of said defendants, it is ordered that said defendants be, and they are hereby, allowed until Friday, December 8, 1893, in which to plead to said indictment.

18 And afterwards, to wit, on the 6th day of December, 1893, there was issued out of said court a bench warrant in words and figures as follows, to wit:

19 DISTRICT OF OREGON, *ss:*

In obedience to the command of the within and annexed warrant of arrest, I have not apprehended the therein-named John Wilson, Alex. Ross, and Bon On Chung, after diligent search they not being found within my district.

HENRY C. GRADY,
United States Marshal,
By J. D. COLEMAN, *Deputy.*

DISTRICT OF OREGON, *ss:*

In obedience to the command of the within and annexed warrant of arrest, I have apprehended the therein-named E. P. Thompson at 15 miles south of Grant's Pass, Oregon, in said district, on the 9th day of December, 1893. The defendant having given the required bonds, he was by me discharged from custody. Bond herewith.

HENRY C. GRADY,
United States Marshal,
By FRED. W. HOGG, *Deputy.*

DISTRICT OF OREGON, *ss:*

In obedience to the command of the within and annexed warrant of arrest, I have not apprehended the therein-named C. B. Cardinell as per instructions of the district attorney.

HENRY C. GRADY,
United States Marshal,
By JOHN A. AHLSTEAD, *Deputy.*

DISTRICT OF OREGON, *ss:*

In obedience to the command of the within and annexed warrant of arrest, I have apprehended the therein-named William Dunbar, P. J. Bannon, James Lotan, John Ross, Glen O. Holman, J. E. Marks, Thomas Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young at Portland, Oregon, in said district, on the 6th day of December, 1893. Said defendants, having given bonds, were by me discharged from custody, and bonds herewith returned.

HENRY C. GRADY,
United States Marshal,
By JOHN A. AHLSTEAD, *Deputy.*

20 DISTRICT OF OREGON, *ss:*

In obedience to the command of the within and annexed warrant of arrest, I have apprehended the therein-named N. Blum and W.

B. Jackling at Portland, Oregon, in said district, on the 6th day of December, 1893, and have them now here present in my custody.

HENRY C. GRADY,
United States Marshal,
By JOHN A. AHLSTEAD, *Deputy.*

21 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

The President of the United States of America to the marshal of our district of Oregon or to his deputy, Greeting:

Whereas at a district court of the United States for the district of Oregon holden at the city of Portland, in said district, on the 6th day of December, 1893, the grand jurors in and for said district found a true bill of indictment against John Wilson, N. Blum, Wm. Dunbar, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, James Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young for the crime of conspiring to commit an offense against the United States, viz, the offense of knowingly and unlawfully aiding and abetting the landing of Chinese laborers in the U. S., against the form of the statutes of the United States in such cases made and provided, as by the said indictment now remaining on file and of record in said court more fully appears: Now, therefore, you are hereby commanded to forthwith apprehend the said defendants abovenamed, if *he* may be found in your district, and them bring before the said court, at the court-rooms thereof, in the city of Portland, to answer the indictment aforesaid.

Hereof fail not, and make due return of this writ with your doings thereon into our said court.

Witness the Honorable Charles B. Bellinger, judge of said district court, and the seal thereof, affixed this 6th day of Dec'r, A. D. 1893.

[SEAL.] R. B. LAMSON, *Clerk.*

Endorsed: Returned & filed Dec. 11, 1893. R. B. Lamson, clerk. [Endorsed:] No. —. U. S. district court, district of Oregon. The United States *vs.* —— ——. Bench warrant. The defendant *is* to be admitted to bail in the sum of one thousand dollars each. R. B. Lamson, clerk. Returned and filed —— —, 189–. —— ——, clerk.

22 And afterwards, to wit, on the 8th day of December, 1893, there was duly filed in said court demurrers to the indictment in words and figures as follows, to wit:

23 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, N. BLUM, WM. DUNBAR, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardineil, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, May Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young. } Sec. 5440, R. S.

Now come the defendants Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, May Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young and demurs to the indictment herein upon the following grounds:

First. That said indictment does not state facts sufficient to constitute a crime or offense against the laws of the United States.

DOLPH, MALLORY & SIMON,
Attorney- for said Defendants.

Endorsed: Filed December 8, 1893. R. B. Lamson, clerk.

24 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, N. BLUM, WM. DUNBAR, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, May Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young. } Sec. 5440, R. S.

Now come the defendants William Dunbar, John Ross, Glen O. Holman, James Lotan, Thomas Jordan, C. B. Cardinell, and C. J. Mulkey, P. J. Bannon, and J. E. Marks & Twin Wo Charley and demur to the indictment herein upon the following grounds:

First. That it does not state facts sufficient to constitute a crime or offense against the laws of the United States.

WILLIAMS, CAREY & WILLIAMS,
Att'ys for Thomas Jordan, Glen O. Holman, & J. E. Marks.
McGINN, SEARS & SIMON,
For P. J. Bannon & Wm. Dunbar.
W. W. THAYER, *Att'y for C. B. Cardinell.*
RUFUS MALLORY & JOSEPH SIMON,
For C. J. Mulkey.
STOTT, BOISE & STOUT & C. W. FULTON,
Att'y for Jas. Lotan.
JAMES GLEASON, *For John Ross.*
EDWARD N. DEADY, *Att'y for Twin Wo Charley.*

I, James Gleason, an attorney of this court, do hereby certify that, in my opinion, that said demurrer is well founded in law and that the same is not interposed for delay.

Dated Portland, Oregon, December 8th, 1893.

JAMES GLEASON.

Endorsed: Filed December 8, 1894. R. B. Lamson, clerk.

25 And afterwards, to wit, on Friday, the 8th day of December, 1893, the same being the 29th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

26 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young.	No. 3594. Indictment, Section 5440, R. S.

DECEMBER 8, 1893.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and Mr. John M. Gearin, special assistant United States attorney, and the defendants N. Blum and W. B. Jackling appearing each in his own proper person and by Mr. F. A. E. Starr, of counsel; the defendants William Dunbar, P. J. Bannon, J. E. Marks, and Thomas Jordan appearing each in his own proper person and by Mr. Henry McGinn, of counsel; the defendant John Ross appearing in his own proper person and by Mr. James Gleason, of counsel; the defendant Glen O. Holman appearing in his own proper person and by Mr. B. F. Bonham, of counsel, the defendant James Lotan appearing in his own proper person and by Mr. Raleigh Stott, of counsel, and the defendants C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Woo Charley, and Charles Young appearing each in his own proper person and by Mr. Rufus Mallory, of counsel; thereupon this cause is submitted to the court without argument upon the demurrers of all of said defendants except said defendants, N. Blum and W. B. Jackling, to the indictment herein; on consideration whereof it is ordered and adjudged that said demurrers be, and the same are hereby,

overruled; whereupon the said defendants, N. Blum and W. B. Jackling, for plea to the said indictment, each for himself says he is guilty as charged therein, and the said defendants, William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan,
27 Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young, for plea to said indictment, each for himself says he is not guilty; whereupon this cause comes on to be heard upon the applications of certain of said defendants for separate trials upon said indictment, and was argued by counsel; on consideration whereof it is ordered that said applications for separate trials be, and the same are hereby, denied, and on motion of said plaintiff it is further ordered that this cause be, and the same is hereby, set for trial on Tuesday, December 12, 1893.

28 And afterwards, to wit, on the 11th day of December, 1893, there was duly filed in said court bail bonds of Mulkey and Bannon in words and figures as follows, to wit:

29 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Be it remembered that on this 6th day of Dec'r, A. D. 1893, before me, a commissioner duly appointed by the circuit court of the United States for the said district of Oregon, personally came C. J. Mulkey and *jointly and severally* acknowledged *themselves* to owe the United States of America the sum of one thousand dollars, to be levied on *their* goods and chattels, lands and tenements, if default be made in the conditions following, to wit:

The condition of this recognizance is such that if the said C. J. Mulkey shall personally appear before the district court of the United States in and for the district aforesaid, at Portland, Oregon, when called, and then and there *to* answer the charge of conspiring to violate the laws of the United States prohibiting the incoming of Chinese into the United States, as charged in indictment No. 3594, filed Dec. 6, 1893, committed within said district of Oregon, in violation of section 5440 of the Revised Statutes of the United States, and then and there abide the judgment of said court and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

C. J. MULKEY. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

J. H. WOODWARD, [SEAL.]
Commissioner of the Circuit Court of the United States for the District of Oregon.

Endorsed: Filed Dec. 11, 1893. R. B. Lamson, clerk.

30 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Be it remembered that on this 6 day of Dec., A. D. 1893, before me, a commissioner duly appointed by the circuit court of the United States for the said district of Oregon, personally came P. J. Bannon, L. C. Henrys, and J. B. Coffee and jointly and severally acknowledged themselves to owe the United States of America the sum of one thousand dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the conditions following, to wit:

The condition of this recognizance is such that if the said P. J. Bannon shall personally appear before the district court of the United States in and for the district aforesaid, at Portland, Oregon, when called, and then and there *to* answer the charge of unlawfully and knowingly aiding and abetting the landing of Chinese laborers in the U. S., committed within said district of Oregon, in violation of section 5440 of the Revised Statutes of the United States, and then and there abide the judgment of said court and not depart without leave thereof, then this recognizance to be void: otherwise to remain in full force and virtue.

P. J. BANNON. [SEAL.]
L. C. HENRYS. [SEAL.]
JNO. B. COFFEY. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

PAUL R. DEADY,
Commissioner of the Circuit Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

L. C. Henrys and J. B. Coffee, sureties on the annexed recognizance, being duly sworn, each for himself deposes and says that he resides at ——, in the county of ——, in said district; that he is a freeholder in the said county and district; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of ——.

L. C. HENRYS.
JNO. B. COFFEY.

Sworn and subscribed to before me this 6th day of Dec., A. D. 1893.

PAUL R. DEADY,
Commissioner of the Circuit Court of the United States for the District of Oregon.

[Endorsed:] United States district court, district of Oregon. The United States *vs.* P. J. Bannon. Recognizance for appearance before district court.

Endorsed: Filed Dec. 11, 1893. R. B. Lamson, clerk.

31 And afterwards, to wit, on Tuesday, the 12th day of December, 1893, the same being the 32d judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

32 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young.	No. 3594. Indictment, Section 5440, R. S.

DECEMBER 12, 1893.

Now, at this day, comes the plaintiff in the above-entitled cause, by Mr. Daniel R. Murphy, United States attorney; Mr. Charles J. Schnabel, assistant United States attorney; Mr. John M. Gearin, special assistant United States attorney, and Mr. George H. Durnad, special counsel, and the defendants William Dunbar and P. J. Bannon appearing each in his own proper person and by Mr. Alfred F. Sears, Jr., of counsel; the defendant John Ross appearing in his own proper person and by Mr. James Gleason, of counsel; the defendant Glen O. Holman appearing in his own proper person and by Mr. C. W. Fulton, of counsel; the defendant J. E. Marks appearing in his own proper person and by Mr. C. N. Wait and Mr. V. K. Strode, of counsel; the defendant Jas. Lotan appearing in his own proper person and by Mr. Raleigh Stott, Mr. C. W. Fulton, and Mr. Joseph Simon, of counsel; the defendant Thos. Jordan appearing in his own proper person and by Mr. W. W. Thayer and Mr. Richard Williams, of counsel; the defendants C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Charles Young appearing each in his own proper person and by Mr. Rufus Mallory, of counsel, and the defendant Lee Moon appearing in his own proper person and by Mr. C. E. S. Wood, of counsel; and this being the day set for the trial of this cause as to said defendants, now come the following-named jurors to try the issue joined between the

plaintiff and the said defendants, viz., H. B. Flannery, G. W.
33 Hunsaker, Charles E. Ladd, W. G. Flett, Thomas Eglin, James Helmick, Joel McCornack, Samuel Buel, John Carstens, W. C. Post, E. G. Sperry, and C. H. Blake, twelve good and lawful men of the district, who, being accepted by the parties and being duly empanelled and sworn, proceed to hear the evidence adduced, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

34 And afterwards, to wit, on Wednesday, the 13th day of December, 1893, the same being the 33d judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

35 In the District Court of the United States for the District of Oregon.

THE UNITED STATES } No. 3594. Indictment, Section 5440, R. S.
vs.
JOHN WILSON *et al.* }

DECEMBER 13, 1893.

Now, at this day, comes the plaintiff herein, by its counsel, as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young, appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

36 And afterwards, to wit, on Thursday, the 14th day of December, 1893, the same being the 34th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

37 In the District Court of the United States for the District of Oregon.

THE UNITED STATES } No. 3594. Indictment, Section 5440, R. S.
vs.
JOHN WILSON *et al.* }

DECEMBER 14, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own

proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and the hour of adjournment having arrived the trial of this cause is continued until tomorrow.

38 And afterwards, to wit, on Friday, the 15th day of December, 1893, the same being the 35th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United Stated district judge, presiding—the following proceedings were had in said case, to wit:

39 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 15, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their named, the trial of this cause proceeds, and the hour of adjournment having arrived the trial of this cause is continued until tomorrow.

40 And afterwards, to wit, the 16th day of December, 1893, the same being the 36th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United Statesd istrict judge, presiding—the following proceedings were had in said case, to wit:

41 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 16, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and the hour of adjournment having

arrived the trial of this cause is continued until Monday, December 18, 1893.

42 And afterwards, to wit, on Monday, the 18th day of December, 1893, the same being the 37th judicial day of the regular November term of said court—present, the Hon. Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

43 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 18, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of Saturday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of Saturday, and, the jury impanelled herein being present and answering to their names, the trial of this cause proceeds, and the hour of adjournment having arrived the trial of this cause is continued until tomorrow.

44 And afterwards, to wit, on Tuesday, the 19th day of December, 1893, the same being the 38th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

45 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 19, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and the hour of adjournment having arrived the trial of this cause is continued until tomorrow.

46 And afterwards, to wit, on Wednesday, the 20th day of December, 1893, the same being the 39th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

47 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 20, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and the hour of adjournment having arrived the trial of this cause is continued until tomorrow.

48 And afterwards, to wit, on Thursday, the 21st day of December, 1893, the same being the 40th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

49 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 21, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and the hour of adjournment having arrived the trial of this cause is continued until tomorrow.

50 And afterwards, to wit, on Friday, the 22d day of December, 1893, the same being the 41st judicial day of the regular November term of said court—present, the Honorable Charles B.

Bellinger, United States district judge, presiding—the following proceeding were had in said case, to wit:

51 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 22, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday, and, the jury empanelled herein being present and answering to their names, the trial of this cause, and said jury having heard the evidence adduced, the arguments of counsel, and the charge of the court, retire in charge of proper sworn officers to consider of their verdict.

52 And afterwards, to wit, on Saturday, the 23d day of December, 1893, the same being the 42d judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

53 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

DECEMBER 23, 1893.

Now, at this day, comes the plaintiff herein, by its counsel as of yesterday, and the defendants William Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young appearing each in his own proper person and by his counsel as of yesterday; and thereupon the jury empannelled herein come into court and answer to their names, and present to the court the following verdict, viz:

"We, the jury in the above-entitled action, find the defendants Jno. Ross, Glen O. Holman, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, Chas. Young, J. E. Marks, Thos. Jordan, Ching Chong Quie not guilty as charged in the indictment. We further find Wm. Dunbar, C. J. Mulkey, and P. J. Bannon guilty as charged in

the indictment. We are unable to agree as to the guilt or innocence of Jas. Lotan and Seid Back.

CHAS. E. LADD, *Foreman.*"

Which verdict is received by the court and ordered to be filed. Whereupon it is ordered that said jury be discharged from further consideration of this cause; and thereupon, on motion of said dedendants, Wm. Dunbar, P. J. Bannon, and C. J. Mulkey, it is ordered that said defendants be allowed ten days from this date in which to file a motion for a new trial herein.

54 And afterwards, to wit, on the 23d day of December, 1893, there was duly filed in said court a verdict in words and figures as follows, to wit:

55 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, N. BLUM, WM. DUNBAR, E. P. THOMPSON, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas. Young, Defendants. } No. 3594.

We, the jury, in the above-entitled action, find the defendants Jno. Ross, Glen O. Holman, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, Chas. Young, J. E. Marks, Thos. Jordan, Ching Chong Quie not guilty as charged in the indictment. We further find Wm. Dunbar, C. J. Mulkey, and P. J. Bannon guilty as charged in the indictment.

We are unable to agree as to the guilt or innocence of Jas. Lotan and Seid Back.

CHAS. E. LADD, *Foreman.*

Endorsed: Filed December 23, 1893. R. B. Lamson, clerk.

56 And afterwards, to wit, on Wednesday, the 3d day of January, 1894, the same being the 50th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

57 In the District Court of the United States for the District of Oregon.

THE UNITED STATES } vs. JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

JANUARY 3, 1894.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendants William Dunbar and P. J. Bannon, by Mr. Henry E. McGinn, of counsel, and, on motion of said defendants, it is ordered that they be, and they are hereby, allowed ten days' additional time in which to file a motion for a new trial herein.

58 And afterwards, to wit, on the 9th day of January, 1894, there was duly filed in said court a motion of C. J. Mulkey for a new trial in words and figures as follows, to wit:

59 In the District Court of the United States for the District of Oregon.

THE UNITED STATES, Plaintiff, } vs. JOHN WILSON *et al.*, Defendants. }

Motion for a New Trial by Defendant C. J. Mulkey.

The defendant C. J. Mulkew comes now, by his attorneys, and moves the court to set aside the verdict of the jury rendered in this cause as to himself and to grant a new trial.

This motion is made upon the indictment upon which the defendant was tried and the minutes of the court taken by Messrs. Sholes and Lake, duly authorized reporters of the proceedings of said trial, and is based upon the following grounds, viz:

1st. There was an insufficiency of evidence to justify the verdict of "guilty" rendered by the jury against the said defendant, C. J. Mulkey.

2nd. That said verdict is against law.

3rd. Errors of law occurring at the trial and duly excepted to by the said defendant.

DOLPH, MALLORY & SIMON,
Attorneys for Defendant C. J. Mulkey.

Due service of the within motion by certified copy, as provided by law, is hereby admitted at Portland, Or., Jan. 9th, 1894.

DANIEL R. MURPHY,
U. S. Attorney for Oregon.

Endorsed: Filed January 9, 1894. R. B. Lamson, clerk.

60 And afterwards, to wit, on the 11th day of January, 1894, there was duly filed in said court a motion of P. J. Bannon for a new trial in words and figures as follows, to wit:

61 In the District Court of the United States for the District of Oregon.

UNITED STATES, Plaintiff,
vs.
JOHN WILSON *et al.*, Defendants.

Motion for a New Trial.

Comes now the defendant above named, P. J. Bannon, and moves the court to set aside the verdict heretofore rendered herein by the jury and for a new trial. This motion is made upon the indictment upon which the defendant was tried and the minutes taken by the duly authorized reporters on the proceedings of said trial, and is based upon the following grounds, to wit:

First. Insufficience of the evidence to justify the verdict, and that it is against law.

Second. Insufficiency of the indictment to justify any verdict and in that the same contains no facts sufficient to constitute a crime.

Third. Error in law occur-ing at the trial and accepted to by this defendant, as more fully appears by reference to the notes of the said testimony as extended and in the bill of exceptions.

HENRY E. McGINN AND
ALFRED F. SEARS, JR.,
Attorney- for said Defendant, P. J. Bannon.

DISTRICT OF OREGON, } ss:
State of Oregon, County of Multnomah, }

Due service of the within motion for new trial is hereby accepted, in Multnomah county, Oregon, within this district, this 11th day of January, 1894, by *a* receiving a copy thereof, duly certified to as such by Alfred F. Sears, Jr., of attorneys for defendant P. J. Bannon.

D. R. MURPHY,
District Attorney for the United States for the District of Oregon.

Endorsed: Filed January 11, 1894. R. B. Lamson, clerk.

62 And afterwards, to wit, on Monday, the 29th day of January, 1894, the same being the 72d judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

63 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs. No. 3594. Indictment, Section 5440, R. S.
JOHN WILSON *et al.*

JANUARY 29, 1894.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendants William Dunbar, P. J.

Bannon, and C. J. Mulkey, by Mr. W. W. Thayer and Mr. A. F. Sears, Jr., of counsel, and, on motion of said plaintiff, it is ordered that this cause be, and the same is hereby, set for hearing on the motion of said defendants for a new trial on Tuesday, February 13, 1894.

64 And afterwards, to wit, on Tuesday, the 13th day of February, 1894, the same being the 85th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

65 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

FEBRUARY 13, 1894.

Now, at this day, on motion of Mr. Daniel R. Murphy, United States attorney, it is ordered that the hearing of this cause upon the motion of the defendants Wm. Dunbar, P. J. Bannon, and C. J. Mulkey for a new trial be continued until Friday, February 23, 1894.

66 And afterwards, to wit, on Saturday, the 24th day of March, 1894, the same being the 18th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

67 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, WILLIAM DUNBAR, P. P. BANNON, and C. J. MULKEY *et al.* } No. 3594. Indictment, Section 5440, R. S.

MARCH 24, 1894.

This cause was heard upon the motions of the defendants William Dunbar, P. J. Bannon, and C. J. Mulkey for new trials herein, and was argued by Mr. Daniel R. Murphy, United States attorney, and Mr. John M. Gearin, special assistant United States attorney, for the plaintiff, and by Mr. Rufus Mallory and Mr. Alfred F. Sears, Jr., of counsel for said defendants. On consideration whereof, it is ordered and adjudged that said motions be, and the same are hereby, denied.

68 And afterwards, to wit, on the 24th day of March, 1894, there was duly filed in said court an opinion on motions for new trial in words and figures as follows, to wit:

69 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, C. J. MULKEY, WILLIAM DUNBAR, and P. J. BANNON *et al.*

No. 3594. Indictment, Section 5440, R. S.

MARCH 24, 1894.

BELLINGER, *J.:*

The indictment in this case is for a conspiracy, under section 5440, Revised Statutes, to aid and abet the landing of Chinese persons in the United States in violation of section 11 of the amendatory act of July 5th, 1884. That section is as follows: "Sec. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land or who shall aid or abet the same or aid or abet the landing in the United States from any vessel of any Chinese person not entitled to enter the United States shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined in a sum not exceeding one thousand dollars and imprisoned for a term not exceeding one year."

The indictment charges that the defendants conspired together to commit an offense against the United States, to wit, the offense and misdemeanor of knowingly and unlawfully aiding and abetting the landing in the United States from a vessel, to wit, the steamship Wilmington and the steamship Haytian Republic, both steamships plying between the port of Portland, Oregon, and Vancouver, in the province of British Columbia, Dominion of Canada, Chinese
70 persons, to wit, Chinese laborers, not lawfully entitled to enter the United States, by furnishing such Chinese laborers false, fraudulent, and pretended evidences of identification and by counselling, advising, and directing said Chinese laborers and furnishing them information and advice touching the questions liable to be asked them upon their application for admission to land from said vessels and by various other means to the grand jury unknown. It is further alleged that on July 28th, 1892, and on June 14th, 1893, and on various other dates between said July 28th and June 14th, in pursuance of such conspiracy there was unlawfully brought from British Columbia, Canada, in the steamship Haytian Republic, into the port of Portland, Oregon, and landed there, a large number of Chinese laborers, the number and names of which are unknown, and that in like manner and between the same dates, other large lots of Chinese laborers were brought here and landed in pursuance of the conspiracy from the steamship Wilmington.

The indictment also alleges the making on dates that are named of fraudulent certificates by the defendants Holman and Bannon, in pursuance of the conspiracy and their delivery to Blum for use in furtherance of the conspiracy.

The jury were unable to agree as to the defendants Lotan and Seid Back; Mulkey, Bannon, and Dunbar were found guilty and the rest of the defendants were found not guilty. Mulkey, Bannon, and Dunbar filed a motion for a new trial upon various grounds,

but mainly upon the ground that the indictment does not state facts sufficient to constitute a crime, and the questions for decision arise upon such motion.

It is contended, in support of the motion, that the allega-
71 tion that the defendants conspired to aid and abet the landing of Chinese persons describes but does not charge the offense for which the defendants were tried; that the indictment is insufficient in not directly charging that the defendants conspired to do such acts as constitute a crime under the section referred to; that the allegation that the defendants conspired to aid the landing of Chinese laborers by furnishing them false evidence, &c., is not a charge that they conspired to furnish such evidence. It is also contended that the facts thus alleged do not constitute the crime of aiding and abetting the landing of Chinese persons, not lawfully entitled to land, under the statute, since it does not appear that the object of the conspiracy was to aid the landing of such Chinese laborers as came from a foreign port or place and as were, therefore, not entitled to land.

The case most relied on, among a large number cited in support of these positions, is that of Pettibone *v.* U. S., 148 U. S., 197. That case grew out of an injunction issued out of the circuit court of the United States for the district of Idaho, enjoining the Miners' Union of Wardner and others from intimidating any employé of the Bunker Hill and Sullivan Mining and Concentrating Company. The indictment alleged that the defendants conspired "to commit an offense against the United States as follows, to wit: Said defendants did, &c., conspire, combine and agree together to intimidate by force and threats of violence the employés of said Bunker Hill and Sullivan Mining and Concentrating Company," &c. It did not allege that

the conspiracy was for the purpose of violating the injunc-
72 tion or of impeding the administration of justice in the U. S. circuit court, or that the defendants, in committing the acts charged, knew that there was an injunction forbidding such acts. It alleged that the conspiracy was to do certain acts and that such acts were prohibited by the injunction.

The court held that an agreement to do the things enjoined was not a combination to violate the injunction, unless it appeared that the parties to the conspiracy knew of the injunction; that there must be a purpose to violate the injunction and such purpose would not be imputed to the defendants from the mere fact that the acts which they were alleged to have conspired to commit were wrongful or unlawful. The court in its opinion says: "This indictment does not in terms aver that it was the purpose of the conspiracy to violate the injunction referred to or obstruct the due administration of justice in the circuit court; but it states, as a legal conclusion from the previous allegations, that the defendants conspired so to obstruct and impede. It had previously averred that the defendants conspired by intimidation to compel the officers of the mining company to discharge their employés and the employés to leave the service of the company, a conspiracy which was not an offence against the United States, though it was against the State. Rev. Stat., Idaho,

sec. 6541. The injunction was also set out, and it was alleged that the defendants did intimidate and compel the employés to abandon work; but the indictment no where made the direct charge that the purpose of the conspiracy was to violate the injunction or to interfere with proceedings in the circuit court."

73 In this case the indictment charges in terms that the conspiracy had for its object the crime of aiding and abetting the landing of Chinese laborers not lawfully entitled to enter the United States. The crime is charged in the language of the statute with the additional averments that the Chinese persons to be aided in landing were laborers seeking to land from the steamships Wilmington and Haytian Republic, which vessels were plying between British Columbia and this city.

The fault that is found with this indictment is that it states a conclusion as to the right to land of the Chinese persons who were to be aided in so doing by the conspiracy. It is contended that the indictment should be so framed as to preclude all inference in favor of the right of such persons to land, and that to do this it was necessary to aver that they came from some foreign port or place.

Where the crime is one that had a common-law name, an indictment charging the crime by such name and leaving its definition to the common law would allege only a conclusion. 1 Bishop Crim. Procedure, sec. 610. Such an indictment does not advise the defendant of the particulars necessary to enable him to prepare his defense and to identify the crime so as to plead the judgment in bar of a second prosecution; but where the words of the statute fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished it is sufficient to set forth the offense in the words of the statute, United States *v.* Carll, 105 U. S., 611. In this case

74 all the acts of the defendants constituting the offense charged are particularly described. Nothing that is relied upon as to such acts is stated as a matter of inference or presumption. The point relied upon is that the indictment states a conclusion as to the right of the Chinese persons, who were to be aided in landing by the conspiracy, to enter the United States; that it is not only necessary to set out all the facts constituting the crime which the conspiracy was formed to commit, but that each of such facts, as just stated, must be so pleaded as to preclude every possible inference favorable to the accused. This involves that highest degree of certainty which places the matter alleged beyond the most "subtle objection." No such certainty has ever been required in the statement of the object of a conspiracy. In indictments for conspiracy the offense which the defendants are accused of having conspired to commit need not be set out with the same degree of strictness that is required where the indictment is for the commission of the offense itself. All the decisions upon this point are to the effect that certainty to a common intent is all that is necessary. The allegation that the defendants conspired to aid and abet the landing in the United States, within this District, of Chinese laborers not lawfully

entitled to enter the United States from the steamships Haytian Republic and Wilmington, both plying between British Columbia and this port, states enough to clearly apprise the defendants of the identical crime with which they are charged. All Chinese laborers are excluded by the acts of Congress. It is, at least, doubtful whether the words "not lawfully entitled to enter the United States" add anything to the indictment. The act makes it a crime
75 to "bring into the United States by land" or to aid and abet the same, or to aid and abet the "landing in the United States from any vessel" of any Chinese person not lawfully entitled to enter the United States.

The landing in the United States from a vessel of Chinese not entitled to land has the same consequence as the bringing of such persons into the United States by land. The words "bring into the United States" and "land in the United States" cannot, in my opinion, be understood to refer to persons already within the United States or to persons who arrive on a vessel from a port or place within the United States. If I am correct in this, it follows that the words "from any foreign port or place" in section two of the act, which makes it an offence for the master of any vessel to knowingly bring within the United States on such vessel and land or attempt to land any Chinese laborer from any foreign port or place, are redundant. It was held *In re* Tong Wah Sick, 36 Fed. Rep., 440, that where Chinese subjects who left one American port for another upon a through passage upon an American vessel without any intention of landing in any foreign country and who did not go ashore, although the vessel landed at a foreign port, there was no departure from the United States. There seems to be no good reason for a different conclusion where the vessel is not American. A passenger upon any vessel from one American port for another without any intention of leaving the United States cannot upon his arrival at the port of destination be said to have departed from the United States or to be "brought into the United States" or landed therein (when landed) within the meaning
76 of the words "bring into" and "land in the United States" contained in sections 2 and 11 of the act in question.

The question to be decided, however, does not depend upon the correctness of this conclusion. The indictment alleges that the conspiracy was to aid and abet the landing in the United States and in the State of Oregon from the steamers Haytian Republic & Wilmington, plying between British Columbia and the port of Portland, Oregon, of Chinese laborers not lawfully entitled to land in the United States. Leaving out of consideration the words "not lawfully entitled to enter the United States," the natural and obvious meaning of what is alleged is that the Chinese laborers referred to were laborers from British Columbia seeking to land from the two steamers named, and it is by such meaning that the phrase "certain to a common intent" is defined. This construction may be liable to technical objection, but the strictness that answers such objection is not, as has already been shown, required in the description of an offense where the indictment is for a conspiracy to

commit such offense. It is the duty of the court in such case to adopt the natural and obvious meaning of the words used, rather than an argumentative one. Nor is the court required to disregard the allegation that the Chinese laborers to be aided in landing were not lawfully entitled to enter the United States. There is no objection to the statement of a conclusion of a fact where such conclusion can only proceed upon a single ground, as in this case. There is no uncertainty or danger of surprise in such case. There is but a single objection that applies to a Chinese laborer not lawfully entitled to land under section 11 of the act of 1884, and that is
77 that he comes from a foreign port or place. As to this, the case is within the principle adopted in United States *v.* Simmons, 96 U. S., 363, where it was held on an indictment under sec. 3266 of the Revised Statutes charging the defendant with causing or procuring some other person to use a still-boiler for the purpose of distilling, "within the intent and meaning of the revenue laws of the United States," that it was not necessary to aver that the distillery referred to was of alcoholic spirits; that the allegation that the vessels were used for the purpose of distilling, "within the intent and meaning of the revenue laws of the United States," was broad enough to advise the accused of the nature of the offense charged.

It is also contended, in support of the motion for a new trial, that the allegation in the indictment that the Chinese persons, whose landing the alleged conspiracy was formed to aid, are to the grand jury unknown, is contrary to the proof, and inexcusable, for the reason that the manifests of the steamers Wilmington and Haytian Republic were on file in the custom-house, and contained the names of all Chinese persons who came to this port on these steamers during the time covered by the conspiracy.

It does not appear that the object of the conspiracy was to aid the landing of particular Chinese, but rather to aid all Chinese of a particular class—to aid the landing of such Chinese laborers as should come here on the steamers Wilmington and Haytian Republic. The indictment goes further, and alleges that in pursuance of the conspiracy, a large number of Chinese laborers, whose names are to the grand jury unknown, were unlawfully brought from British Columbia on such steamships and landed at the port of Port-
78 land. The steamers' manifests do not identify these laborers. They fail to disclose that any Chinese laborers arrived at this port by such vessels. The Chinese passengers who arrived during this time in the steamers in question are described on the steamers' manifests as "merchants." There is nothing in the manifests to give information of the names of any laborers unlawfully landed, and upon this the defendants make the additional point that these manifests, having been introduced in evidence by the Government, establish the fact that the Chinese passengers who arrived by the Wilmington and Haytian Republic during the period of the conspiracy were merchants and entitled to land, and that the verdict as to this is contrary to the evidence.

These manifests, so far as they relate to passengers, are the sworn

statements of the master of the vessel of the passengers he carries, their sex, occupation, nationality, &c., necessarily derived from information furnished by the passengers themselves. These statements are not evidence in the trial of any issue depending upon such facts. Moreover, it is immaterial whether any Chinese laborers were in fact landed as a result of the alleged conspiracy. If the criminal agreement was entered into and any of the overt acts alleged was committed it is enough.

It is urged in behalf of the defendant Mulkey that there is no evidence tending to show that he was a party to or had knowledge of the alleged conspiracy; that the only testimony there is to involve Mulkey is that of Blum, to the effect that he hired Mulkey to aid and abet the landing of Chinese and to assist in smuggling opium, and that there is nothing in this to imply knowl-
79 edge on Mulkey's part that a conspiracy was in existence for such objects. The testimony of Blum is to the effect that Dunbar, Jackling, and himself entered into an arrangement to effect the landing of Chinese laborers from British Columbia arriving by the Wilmington and Haytian Republic by means of fraudulent certificates; that afterwards Dunbar introduced the defendant Bannon, who was brought into the office of the steamship company, and with whom the matter was talked over and who was told what he was expected to do and requested to have 500 blank Chinese certificates printed in three or four different forms; that Bannon agreed to make out the certificates for two dollars each, Blum and Dunbar to furnish the Chinese pictures therefor; that thereafter and during October, 1892, on a Sunday morning, he, Blum, met defendant Mulkey on board the Haytian Republic as she was lying at the Union Pacific dock in this city; that they came up town together in a carriage and had a bottle of wine in a private box in the reception saloon; that he said to Mulkey, "You have been bothering our Chinese and opium business a good deal, and I want to have a private talk with you," and was invited by Mulkey to meet him at his room in the Portland hotel the next day at 2 o'clock. Blum continues his testimony as follows: "I went up there the next day, Monday, and in the meantime I told Mr. Dunbar of this appointment. Mr. Jackling was here, too. We all talked it over, and it was suggested between us, by all of us, if we could make any deal with Mulkey to bring him into this combination we could afford to pay him to do it. When I met Mulkey I discussed this subject with him and told him he was giving us a good deal of—a little—an-
noyance, and up to the present time there had been noth-
80 ing but glory in it for him." Blum testifies that in this conversation Mulkey told him that he (Mulkey) knew that we (the Merchants' Steamship Co.) were bringing in a great deal of opium and a great many Chinese laborers who had no right to land, and threatened to get them all in the penitentiary. Blum testified as to what followed this threat: "And I said I want to know how much money it would take to have him interested in our business matters. After a good deal of talk he agreed not to interfere with our Chinamen or Chinese laborers or our opium matters, and let us

bring just as many as we pleased in consideration of $1,200 to be paid him monthly in advance, the first payment to be made right then and there." This, Blum says, was agreed to, with the further agreement that Inspector Dillon should bother "us" (them) no more, and if Dillon got any information Mulkey would communicate it to the company in time to enable them to let the Chinamen and opium get off." Blum further testified that this monthly payment of $1,200 was paid during the continuance of the conspiracy. A number of letters signed "John," addressed to John Quinlan, were received in evidence. Blum testified that these letters were in pursuance of an arrangement between himself and Mulkey, who was to address Blum under this name. The testimony of other witnesses (although the testimony was conflicting as to this) identified the writing as that of the defendant Mulkey. There was inherent conspiracy in these letters. One of them is as follows: "It looks as though some local growlers were come into your city to make trouble for your jay birds. I am not sure of this, but strongly suspect it. Under a lately pub-
81 lished pamphlet on the alighting of jay birds, if they are not laborers or working birds and have been here before they may alight. Have Jim quietly work along and land these he safely can, and let balance go to court. There has been a good deal of loose talk about John's going there so much, so he thinks he had not better go over there now. In case of a subsequent kick from the great mogul he can and will save them. Do not make any deal with them, they will not do to trust. It took fine work and a liberal use of grease to prevent a grand explosion in your vacinity last night and this morning." According to Blum's testimony "John" was Mulkey himself: the "great mogul" was the Secretary of the Treasury, whom the conspirators feared; "Jim" was the defendant, James Lotan, collector of customs at this port, who is also referred to in other of the letters as "papa"; the local growlers who were making trouble, and who were not to be dealt with because they could not be trusted, were Treasury agents.

In another of these letters reference is made to "that Jackling matter," and this is explained by Blum to refer to a complaint by Jackling that Inspector Dillon, whom Mulkey had agreed should be "pulled off" at Vancouver, was hounding Jackling all around the docks, and that Jackling was becoming nervous in consequence. The same letter also refers to "the 1,200" being paid Mulkey, with the statement, among others, that "our little side show will
82 help you to recoup. If you don't understand this I will explain when I see you."

This reference to Jackling and to the little "side show" between the writer and Blum, which was to help the latter to recoup, tend to show agreement and co-operation with the Blum, Jackling, and Dunbar combination, and to render inadmissable the explanation that whatever of criminal relation the facts tend to establish between Mulkey and Blum was apart from such combination. The reference to a "side show" indicates that they were acting conjointly

with others, and were at the same time engaged in transactions to which such others were not admitted.

The fact of the original criminal agreement between Blum, Dunbar, and Jackling is testified to by Blum and Jackling. The assent of the other defendants may be established as an inference by the jury from the other facts proved. Any joint action upon a material point or a collection of independent but co-operating acts by persons closely associated with each other is sufficient to enable the jury to infer concurrence of sentiment. Archer *v.* State, 106 Ind., 426. Without the proof of the original agreement it was competent to prove the acts of the different defendants, and thus prove the conspiracy between them. Spies *v.* The People, 122 Ill., 1.

The evidence of joint action between the defendants covers a great many transactions and extends over several months of time. It is not only sufficient to authorize an inference of guilt, but it is of a character, if believed, to make any other inference impossible. The evidence of knowledge and participation in the combination on the part of the defendant Mulkey does not, however, depend upon a collection — independent and co-operating acts,
83 although the evidence of such acts is sufficient for such purpose. The formal agreement with Mulkey testified to by Blum directly tends to connect the former with the terms of the original combination. Blum testifies that after he had arranged for his meeting with Mulkey at the Portland it was agreed between himself, Dunbar, and Jackling that they would, if possible, make a "deal" with Mulkey to bring him into this combination, and that when he met Mulkey by such appointment he "discussed this subject with him;" that he asked Mulkey "how much it would take to interest him in our business matters," and that the price was fixed at $1,200 per month.

It is argued that the evidence is insufficient to sustain the verdict. I am of the opinion that such evidence is not only sufficient to sustain the verdict, but that the correctness of the conclusion reached by the jury does not admit of a reasonable doubt.

The point is also urged that Blum's plea of guilty is a conviction of crime that renders him incompetent to testify. The rule is well settled that there must be a judgment of conviction pronounced by the court to have that effect. Rapalje on Law of Witnesses, sec. 16; Blanfus *v.* People, 69 N. Y., 108. And besides this it is a matter of doubt whether the charge to which the witness pleaded guilty is punishable by imprisonment in the penitentiary. The punishment provided is fine and imprisonment without hard labor. Section 5539 of the Revised Statutes provides that whenever any criminal convicted of any offense against the United States is imprisoned in the jail or penetentiary of a State such criminal shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which
84 such jail or penitentiary is situated, and while so confined therein shall be exclusively under the control of the officers having charge of the same under the laws of such State or Territory. Prior to this act, on March 3, 1825, Congress had provided

that in every case where criminals convicted of any offense against the United States shall be sentenced to imprisonment to hard labor it shall be lawful for the court passing the sentence to order the same executed in any State prison within the district where the court is holden, the use of which has been granted by the State for that purpose. The act of the legislature of this State passed Oct. 29, 1870, authorizing the keeper of the State penitentiary to receive United States prisoners, recites this last act of Congress and appears to have been passed in contemplation of that act, and therefore to have had in view only persons who are sentenced to imprisonment at hard labor.

All State convicts in this State are subject to hard labor and may be bound by contracts for labor to private persons. This presents the question whether a person convicted of an offense that does not provide for a judgment requiring hard labor can be imprisoned in a penitentiary where such labor is required under the laws and regulations governing the same and where the act of the State for the keeping of such prisoners appears to have been passed with reference to United States prisoners under sentence of imprisonment at hard labor.

The motions are denied.

Mr. Rufus Mallory and Mr. Alfred F. Sears, Jr., for the defendants.

Mr. Daniel R. Murphy, United States attorney; Mr. John M. Gearin, special assistant U. S. attorney, and Mr. Charles J. Schnabel, assistant United States attorney.

(Signed) CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed M'ch 24, 1894. R. B. Lamson, clerk.

85 And afterwards, to wit, on Monday, the 11th day of June, 1894, the same being the 85th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

86 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

JUNE 11, 1894.

Now, at this day, on motion of Mr. Daniel R. Murphy, United States attorney, it is ordered that this cause be, and the same is hereby, set for trial on Monday, June 25, 1894.

87 And afterwards, to wit, on Friday, the 22d day of June, 1894, the same being the 95th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

88 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

JUNE 22, 1894.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendant C. B. Cardinell, appearing in his own proper person and by Mr. W. W. Thayer, of counsel, and waiving arraignment upon the indictment herein, for plea thereto says he is not guilty.

89 And afterwards, to wit, on Monday, the 25th day of June, 1894, the same being the 97th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

90 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back. } No. 3594. Indictment, Section 5440, R. S.

JUNE 25, 1894.

This cause was heard upon the application of the defendant C. B. Cardinell for a separate trial and was argued by counsel; on consideration whereof it is ordered that said application be, and the same is hereby, allowed; whereupon, the plaintiff now appearing by Mr. Daniel R. Murphy, United States attorney; Mr. Charles J. Schnabel, assistant United States attorney, and Mr. John M. Gearin and Mr. George H. Durand, special counsel, and the defendant E. P. Thompson, appearing in his own proper person and by Mr. Rufus Mallory, of counsel, and waiving arraignment upon the indictment herein, for plea thereto says he is not guilty, and the defendant Jas. Lotan appearing in his own proper person and by Mr. C. W. Fulton, Mr. Raleigh Stott, Mr. W. W. Thayer, Mr. George H. Durham, Mr. Richard Williams, Mr. Joseph Simon, and Mr. George C. Stout, of counsel, and the defendant Seid Back appearing in his own proper person and by Mr. Rufus Mallory, of counsel, and this being the day set for the trial of this cause as to the said defendants, E. P. Thompson, Jas. Lotan, and Seid Back, now come the following-named jurors to try the issues joined as to said defendants, viz., W. J. Funk, Prier Scott, J. W. Catching, William Ferguson, J. H. French, James E. Dixon, J. E. Hedges, J. F. Steiwer, C. P. Glover, D. F. Stafford, D. W. Smith, and Charles Fitzpatrick, twelve good and lawful men of the district, who, being accepted by the parties

and being duly empannelled and sworn, proceed to hear the evidence adduced, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

91 And afterwards, to wit, on Tuesday, the 26th day of June, 1894, the same being the 98th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

92 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back.	No. 3594. Indictment, Section 5440, R. S.

JUNE 26, 1894.

Now, at this day, comes the plaintiff, by its counsel as of yesterday, and the defendants E. P. Thompson, Jas. Lotan, and Seid Back appearing each in his own proper person and by their counsel as of yesterday, and the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

93 And afterwards, to wit, on Wednesday, the 27th day of June, 1894, the same being the 99th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

94 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back.	No. 3594. Indictment, Section 5440, R. S.

JUNE 27, 1894.

Now, at this day, comes the plaintiff, by its counsel as of yesterday, and the defendants E. P. Thompson, Jas. Lotan, and Seid Back appearing each in his own proper person and by their counsel as of yesterday, and the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

95 And afterwards, to wit, on Thursday, the 28th day of June, 1894, the same being the 100th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

96 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back.	No. 3594. Indictment. Section 5440, R. S.

JUNE 28, 1894.

Now, at this day, comes the plaintiff, by its counsel as of yesterday, and the defendants E. P. Thompson, Jas. Lotan, and Seid Back appearing each in his own proper person and by their counsel as of yesterday, and the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

97 And afterwards, to wit, on Friday, the 29th day of June, 1894, the same being the 101st judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

98 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back.	No. 3594. Indictment, Section 5440, R. S.

JUNE 29, 1894.

Now, at this day, comes the plaintiff, by its counsel as of yesterday, and the defendants E. P. Thompson, Jas. Lotan, and Seid Back appearing each in his own proper person and by their counsel as of yesterday, and the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and, the hour of adjournment having arrived, the trial of this cause is continued until tomorrow.

99 And afterwards, to wit, on Saturday, the 30th day of June, 1894, the same being the 102d judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

100 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back.	No. 3594. Indictment, Section 5440, R. S.

JUNE 30, 1894.

Now, at this day, comes the plaintiff, by its counsel as of yesterday, and the defendants E. P. Thompson, Jas. Lotan, and Seid Back appearing each in his own proper person and by their counsel as of yesterday, and the jury empanelled herein being present and answering to their names, the trial of this cause proceeds, and said jury, having heard the evidence adduced, the arguments of counsel, and the charge of the court, retire in charge of proper sworn officers to consider of their verdict.

101 And afterwards, to wit, on Monday, the 2d day of July, 1894, the same being the 1st judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

102 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. Thompson, W. B. Jackling, P. J. Bannon, Jas. Lotan, C. B. Cardinell, C. J. Mulkey, and Seid Back.	No. 3594. Indictment, Section 5440, R. S.

JULY 2, 1894.

Now, at this day, comes the plaintiff, by its counsel as of Saturday last, and the defendants E. P. Thompson, Jas. Lotan, and Seid Back, by their counsel as of Saturday last, and thereupon the jury empanelled herein come into court and answer to their names and state to the court that they are unable to agree upon a verdict; whereupon it is ordered that said jury be, and they are hereby, discharged from further consideration of this cause.

103 And afterwards, to wit, on Friday, the 13th day of July, 1894, the same being the 11th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

104 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON *et al.* } No. 3594. Indictment, Section 5440, R. S.

JULY 13, 1894.

Now, at this day, on motion of Mr. Daniel R. Murphy, United States attorney, it is ordered that the defendants P. J. Bannon and C. J. Mulkey do appear before this court for sentence on Tuesday, July 17, 1894.

105 And afterwards, to wit, on Tuesday, the 17th day of July, 1894, the same being the 14th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

106 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, P. J. BANNON, and C. J. MULKEY *et al.* } No. 3594. Indictment, section 5440, R. S.

JULY 17, 1894.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendant C. J. Mulkey appearing in his own proper person and by Mr. Rufus Mallory and Mr. W. W. Thayer, of counsel, and the defendant P. J. Bannon appearing in his own proper person and by Mr. Alfred F. Sears, Jr., of counsel, and thereupon said plaintiff moves the court for judgment upon the verdict of guilty heretofore found by the jury against said defendants.

It is therefore considered that said defendant C. J. Mulkey do pay a fine of five thousand dollars, and that he be imprisoned for a term of one year, and that said defendant P. J. Bannon be imprisoned for a term of six months; and it is ordered that until otherwise ordered or provided these sentences of imprisonment be executed in the county jail of Multnomah county, Oregon, and that said defendants stand committed till these sentences be performed or till they be discharged according to law.

107 And afterwards, to wit, on the 17th day of July, 1894, there was issued out of said court a commitment in words and figures as follows, to wit:

108 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, H. C. Grady, U. S. marshal for the district of Oregon, hereby certify that I served the annexed warrant of commitment in Portland, Multnomah county, in said district, on the 17th day of July, 1894, by arresting and taking into my custody the therein-named defendants, P. J. Bannon & C. J. Mulkey, and they each having given bond on appeal to the Supreme Court of the United States I did, on this 17th day of July, 1894, discharged each of said defendants from custody by virtue of an order duly issued by the clerk of the district court of the United States for the district of Oregon.

Dated July 17th, 1894.

H. C. GRADY, *U. S. Marshal,*
By GEO. HUMPHREY, *Deputy.*

109 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, P. J. BANNON, and C. J. MULKEY. } No. 3594. For Violation of Section 5440, Revised Statutes.

THE UNITED STATES OF AMERICA, } ss:
District of Oregon, }

The President of the United States to the marshal of the district of Oregon or to his deputy and to the keeper of either of the jails in our said district, Greeting:

Whereas at the July term of the above-entitled court P. J. Bannon & C. J. Mulkey were duly convicted of the crime of conspiring to commit an offense against the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America, for which offense they hath this day been sentenced by our court to pay a fine of—Mulkey, $5,000.00 and to be imprisoned in Multnomah county jail and to be there kept for the term of—Bannon 6 months and Mulkey 1 year, and to stand committed till this sentence be performed:

Now, this is to command you, the said marshal or deputy, to take and keep and safely deliver the said defendants, Bannon & Mulkey, into the custody of the keeper or warden in charge of said prison forthwith.

And this is to command you, the said keeper or warden in charge of the said prison, to receive from the said marshal or deputy the said defendants, Bannon & Mulkey, convicted and sentenced as aforesaid, and them keep and imprison in accordance with said sentence or until they be otherwise discharged by law. Hereof fail not at your peril.

Witness the Honorable Charles B. Bellinger, judge of our
[SEAL.] said court, and the seal thereof, affixed at Portland, in said district, this July 17, 1894. R. B. LAMSON, *Clerk.*

Endorsed: Returned & filed July 17, 1894. R. B. Lamson, clerk.

110 And afterwards, to wit, on the 17th day of July, 1894, there was duly filed in said court petition for writ of error and order on petition in words and figures as follows, to wit:

111 In the District Court of the United States for the District of Oregon.

UNITED STATES, Plaintiff and Defendant in Error,
vs.
JOHN WILSON, N. BLUM, WM. DUNBAR, E. P. THOMPSON, W. B. Jackling, John Ross, Glen O. Holman, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bon On Chung, Twin Wo Charley, and Chas Young, Defendants, and C. J. Mulkey and P. J. Bannon, Defendants and Plaintiffs in Error.

Indictment under section 5440 of the Revised Statutes of the United States.

To the honorable the district court of the United States aforesaid:

Come now the defendants in the above-entitled action, plaintiffs in error herein, C. J. Mulkey and P. J. Bannon, and respectfully petition the said court for an order permitting them to procure a writ of error directed from the Supreme Court of the United States from the judgment made and entered in the said cause in the said district court against the said defendants, C. J. Mulkey and P. J. Bannon, plaintiffs in error and petitioners herein, and in favor of the said plaintiff and defendant in error, United States of America, said judgment having been one of conviction of the crime charged in said indictment and sentencing the said defendants, Mulkey and Bannon, petitioners herein, as follows, to wit: The said C. J. Mulkey to pay a fine of $5,000 and to be imprisoned in Multnomah county jail for a term of one year and the said P. J. Bannon to be imprisoned in Multnomah county jail for a term of six months, and having been made and entered upon Tuesday, the seven-
112 teenth day of June, A. D. 1894; and your petitioners base this their petition upon the assignment of errors filed contemporaneously herewith in the clerk's office of said district court.

RUFUS MALLORY,
Attorney for the Above-named Defendant and Petitioner, C. J. Mulkey.
ALFRED F. SEARS, JR.,
Attorney for the Above-named Defendant, P. J. Bannon.

It is hereby ordered that a writ of error do issue as prayed for in said petition, and that this writ is to operate as a supersedeas and

stay of execution upon the filing of a bond by defendants, with two or more sureties as to each defendant, the defendant C. J. Mulkey a bond as aforesaid in the sum of eight thousand dollars and the defendant P. J. Bannon a bond as aforesaid in the sum of one thousand dollars; said bonds to be each approved by the clerk of the district court of the United States as security that the defendants shall each in all respects abide by and perform the order and judgments of the appellate court herein.

(Signed) CHARLES B. BELLINGER, *Judge.*

Endorsed: July 17, 1894. R. B. Lamson, clerk.

113 And afterwards, to wit, on the 17th day of July, 1894, there was duly filed in said court bond of C. J. Mulkey and P. J. Bannon on writ of error in words and figures as follows, to wit:

114 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN WILSON, P. J. BANNON, and C. J. MULKEY *et al.*	No. 3594. Indictment, Section 5440, R. S.

Know all men by these presents that we, C. J. Mulkey, as principal, and Curg Hunsaker, A. C. Southmayd, and Richard S. Perkins, as sureties, are held and firmly bound unto the United States of America in the sum of eight thousand dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated July 17th, A. D. 1894.

Whereas the above-named C. J. Mulkey has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named C. J. Mulkey shall prosecute said writ of error to effect and shall personally appear before the district court of the United States for the district of Oregon and then and there abide the judgment of said district court heretofore rendered against him on July 17, 1894, if he shall fail to make good his plea before said Supreme Court, then this obligation shall be void; otherwise to remain in full force and virtue.

C. J. MULKEY. [SEAL.]
CURG HUNSAKER. [SEAL.]
A. C. SOUTHMAYD. [SEAL.]
R. S. PERKINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
R. B. LAMSON.
J. A. SLADEN.

Approved:
R. B. LAMSON, *Clerk.*

115 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Curg Hunsaker, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of six thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

CURG HUNSAKER.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, A. C. Southmayd, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of two thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. C. SOUTHMAYD.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Richard S. Perkins, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of eight thousand dollars over
116 and above all my just debts and liabilities, exclusive of property exempt from execution.

R. S. PERKINS.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court, District of Oregon.

Endorsed. Filed July 17, 1894. R. B. Lamson, clerk.

117 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, P. J. BANNON, and C. J. MULKEY *et al.*
No. 3594. Indictment, Section 5440, R. S.

Know all men by these presents that we, P. J. Bannon, as principal, and J. B. Coffey and L. C. Henrys, as sureties, are held and firmly bound unto the United States of America in the sum of one thousand dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated July 17, 1894.

Whereas the above-named P. J. Bannon has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named P. J. Bannon shall prosecute said writ of error to effect and shall personally appear before the district court of the United States for the district of Oregon and then and there abide the judgment of said district court heretofore rendered against him on July 17, 1894, if he shall fail to make good his plea before said Supreme Court, then this obligation shall be void; otherwise to remain in full force and virtue.

P. J. BANNON. [SEAL.]
JNO. B. COFFEY. [SEAL.]
L. C. HENRYS. [SEAL.]

Signed, sealed, and delivered in the presence of—

R. B. LAMSON.
J. W. McGOVERN.

Approved: R. B. LAMSON, *Clerk.*

118 UNITED STATES OF AMERICA, *District of Oregon*, } *ss:*

I, John B. Coffey, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of one thousand dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

JNO. B. COFFEY.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, }
District of Oregon, } ss:

I, L. C. Henrys, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of one thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

L. C. HENRYS.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

Endorsed: Filed July 17, 1894. R. B. Lamson, clerk.

119 And afterwards, to wit, on the 17th day of July, 1894, there was duly filed in said court an assignment of errors in words and figures as follows, to wit:

120 In the District Court of the United States for the District of Oregon.

UNITED STATES, Plaintiff and Defendant in Error, }
vs.
JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. THOMPSON, W. B. Jackling, John Ross, Glen O. Holman, J. E. Marks, Jas. Lotan, Thos. Jordan, C. B. Cardinell, Alex. Ross, Ching Chong Que, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, See Moon, Ding Wing, Lee Wing, Wing John, Bow On Chung, Twin Wo Charley, and Chas. Young, Defendants, and C. J. Mulkey, and P. J. Bannon, Defendants and Plantiffs in Error. }

Indictment under section 5440 of the Revised Statutes of the United States.

The defendants in the above-entitled action, C. J. Mulkey and P. J. Bannon, plaintiffs in error herein, having petitioned the said court for an order permitting them to procure a writ of error to this court, directed from the Supreme Court of the United States, from the judgment made and entered in the said cause against the said defendants C. J. Mulkey and P. J. Bannon, plaintiffs in error herein, and in favor of the plaintiff, the United States of America, defendant in error herein, said judgment being one of conviction

121 for the offence charged in said indictment and sentencing them as follows, to wit: The said C. J. Mulkey, that he be imprisoned one year in the county jail of Multnomah county, in the State of Oregon, and pay a fine of five thousand dollars ($5,000.00); and the said P. J. Bannon, that he be imprisoned six months in the jail of said Multnomah county, now make and file with their said petition the following and specify the same as their

assignments of error herein, and say that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

I.

That the matters charged in the indictment under section 5440 of the Revised Statutes against the said C. J. Mulkey and P. J. Bannon do not constitute a crime by the common law or under any statute of the United States.

II.

The indictment against the defendants C. J. Mulkey and P. J. Bannon does not charge said defendants with any crime at common law or under any statute of the United States.

III.

That matters, testimony to prove which was given before the district court on the trial of the said C. J. Mulkey and P. J. Bannon, defendants, before a jury do not constitute a crime by the common law or under any statute of the United States.

IV.

122 That the testimony delivered on the trial does not prove or tend to prove that the defendants C. J. Mulkey or P. J. Bannon were privy to, or had any knowledge of, or information concerning the pretended conspiracy in the indictment mentioned or any conspiracy whatever.

V.

That the court erred in permitting N. Blum to be sworn and examined as a witness on the part of the United States and in overruling and not sustaining the defendants' objection to said N. Blum being so sworn and examined, upon the ground and for the reason that prior to the date at which the said Blum was so offered as a witness he, the said Blum, had in the same court and at the same term and as a defendant in the same indictment with the other defendants then about to be tried, plead and confess in open court that he was guilty and was thereby convicted of the crime in said indictment charged, and that said plea and conviction had been then and there duly entered of record and no motion or other proceeding has been made or commenced to set said plea and conviction aside, and the same was then standing and of record against him, the said Blum. That the crime of which said N. Blum had been so convicted on said plea of "guilty" is an infamous crime, and by reason of such conviction said N. Blum is rendered infamous and incompetent and disqualified to be sworn or give evidence in this cause or in any court of justice.

VI.

That the court erred in overruling and not sustaining the
123 defendants' objection to the following questions propounded to the said N. Blum, who was produced and sworn as a witness, and being examined on the part of the United States by an attorney representing the United States on the trial of this cause, to wit:

Q. "I will ask you if during the early part of the year 1892 yourself, Mr. Dunbar, one of the defendants, were engaged in any business enterprise together?

A. "Yes, sir."

Q. "You may state what they were—the business of the firm or copartnership?"

Objected to by counsel for defendants, for the reason and upon the ground that the indictment does not charge any offense against the laws of the United States.

Objection overruled and exception allowed.

Q. I ask what the partnership agreements were between them?

Mr. FULTON: Between the witness and whom?

Mr. GEARIN: Between him and Dunbar.

Mr. FULTON: I make a special objection to that as immaterial.

COURT: That is preliminary, I suppose.

Objection overruled. Exception allowed.

A. Well, we had no partnership contract; we were interested in two corporations.

VII.

That the said court erred in overruling and not sustaining the defendants' objection to the following questions propounded to the said N. Blum, produced and sworn as a witness, and being examined on the part of the United States by an attorney representing the United States on the trial of this cause, to wit:

Q. You may state if some time in the spring of 1892 yourself, Mr. Dunbar, Mr. Jackling, and Mr. Thompson had any arrangement
or agreement touching the landing of Chinese persons in the
124 United States.

Objection of counsel for defendant as immaterial and irrelevant overruled on the ground that it was only preliminary. Exception allowed.

A. Yes, sir; we came to an agreement of that kind after discussing the matter.

Q. Now you may state to the court and jury what the agreement was.

Q. What time was it you had the agreement, Mr. Blum?

A. Well, we started into this thing I should say about June or July, 1892.

VIII.

That the said district court erred in overruling and not sustaining the defendants' objection to the following questions propounded to the said N. Blum upon his direct examination on the part of the United States and while being examined as a witness on the part of the United States by an attorney representing the Government, to wit:

Q. You may state to the jury what agreement and understanding you four had together there, what you were to do, and how you were to do it; just state fully.

A. Well, to explain the matter, I would have to go back to the time when we commenced running the steamers in British Columbia.

Q. Well, go on and tell it.

To this request counsel for the defendants objected, and the objection was overruled and the witness permitted to answer as follows and an exception allowed:

Q. Go right along and tell what agreements you had between those people and yourselves.

A. Well, about the 1st day of March, 1892, the steamship Wilmington was owned at the time by William Dunbar, E. P.
125 Thompson, and myself. That was, I think, about the time that we operated the Merchants' Steamship Company. It may have been a month or a little more prior to that time, but we started running on the British Columbia route under a freight contract with the Canadian Pacific railway. We had with the Canadian Pacific Railroad Company a contract to bring all of their Chinamen, Chinese laborers and merchants that they brought from China to Vancouver for Portland.

Objected to by counsel for defendant on the ground that the contract will show for itself if it is in writing, and it is immaterial in any event, whether in writing or not. Objection overruled. Defendants except, and exception allowed.

A. The Merchants' Steamship Company agreed to carry Chinese passengers for the Canadian Pacific railway from Vancouver to Portland for which we were to receive $6.00 a head, and we established a local rate between Vancouver and Portland for Chinese passengers of, I think, at first $7.00. We then found that they were coming over here in pretty big numbers, and we also found——

Counsel objects to last statement of witness as incompetent. Objection overruled, and defendant's counsel excepts and exception allowed.

Q. Go right along.

A. After consultation then between Dunbar, Jackling, and myself (I would not say that Thompson was there; I don't know; Thompson did not talk to us much at any time because the management of the steamers was entirely in the hands of Dunbar), we concluded to raise the rate locally to $10.00. We found that they

did not check it any for the reason that the Chinamen coming over here would sue out writs of *habeas corpus* and take——

Objected to by counsel for defendant because a statement
126 of the witness' conclusion and immaterial. Objection overruled and defendant's counsel excepted. Exception allowed.

A. They detained the ship here and Mr. Dunbar finally notified our agent or the captain.

IX.

That said court erred in overruling and not sustaining the defendants' objection to the following questions propounded to the said N. Blum, witness as aforesaid:

(Counsel for defendant here asked that this testimony may be received under our objection and considered as objected to and that will save our making the objection.)

The COURT: Yes; it may.

Mr. GEARIN, counsel for the United States: We are satisfied with that, that counsel shall be considered as objecting to all of it and their exception saved), to wit:

Q. Go on.

A. The captain of the Wilmington was notified not to take any more Chinese passengers unless they put up a bond at Vancouver to guarantee the loss of time sustained by the steamer in landing them. Well, that ran along for a little while and we then concluded that we wanted to handle all the China business, and we got together and saw where we could form a little trust or monopoly and we started in figuring the thing up. After talking the thing over considerably we concluded to raise the fare.

Q. Who was this got together?

A. Dunbar and Blum. I am talking about what I said, what Dunbar said, what Jackling said, and all of us. We all got together.

COURT: Well, state what was done.

A. We raised the price to $50.00 per head, that is the local fare between Vancouver and Portland, thinking it would prob-
127 ably force them to pay some attention to ourselves. We raised the price to $50.00, I think, about May, 1892—that is, locally. We handled white people for $10.00 in the cabin, first class. Chinamen had to pay $50.00 in the steerage. About this time Ching Chong Quie——

Q. One of the defendants?

A. Yes, sir; he kind of got into the thing; wanted a little finger in it. We concluded that we could have a lot of Chinese certificates made out, furnish these certificates and probably assist in landing the Chinamen, the laborers, at an expense to the Chinamen of about $100 to $120 a head. Now, that shows you the object in raising our fare to $50. If they did not——

Counsel for the defendants object to the argument of the witness.

COURT: You need not state why.

WITNESS (interrupting): Well, we discussed that, Judge, between ourselves.

(COURT:)

Q. Well, state what was said between yourselves.

A. About that time William Dunbar introduced me to a gentleman named P. J. Bannon, who is an attorney here, who was brought to our office.

Q. One of the defendants?

A. Yes, sir; and we talked the matter over, told him what we wanted to do, and requested him to have printed 500 blank Chinese certificates, I think, in either three or four different forms. I think we have three or four forms here. I am not certain about that. We made them out and we commenced bringing the Chinamen over; then we got along to about July, about the time Mr. Lotan was appointed collector.

Q. Mr. Blum, in your examination yesterday you stated that an agreement was entered into between you and Mr. Jackling, Mr. Dunbar, and Mr. Thompson, touching these Chinese people. Now, state to the jury what that agreement was—what part you were to play in it, Dunbar was to have in it, and Jackling and Thompson. State fully.

128 A. Well, we entered into an agreement between us to bring these Chinese laborers from British Columbia to Portland and we were all to assist in the matter. We were to get some attorneys and notary publics to make out——

Counsel for defendants object to the answer as stating conclusions.

COURT: Let the witness state the substance of what was said and done. I don't know any other way to get at it. I suppose the witness is not required to state the precise language unless he can.

WITNESS: We concluded after talking the matter over a good deal that we could handle the Chinese labor question—that is, to bring Chinese laborers in.

Defendant objects to witness stating his conclusions.

COURT: You need not state anything except the substance of the agreement. State the substance of what was agreed.

A. We agreed to have Chinese and to make arrangements with parties in Victoria to furnish the pictures; also to get the pictures of the different Chinese merchants here, to have blank certificates printed, filled out, fictitious names signed to the certificates, and to control the landing of these Chinese in this country when they got here, and the price we established at $120 a head.

Mr. FULTON, for defendants: I must insist upon our objection at this point. It is very important that we have not the conclusions of the witness, but the agreement. Would it not be the proper

thing for him to say Thompson said so and so, Dunbar said so and so, so that the jury may determine whether they agreed or not?

COURT: If he can remember the language he may state it, but it is impossible for a witness always to remember what each man said in the agreement in a conspiracy that begins and grows and
129 developes, probably, or may. I do not know how it is in this case or what may be claimed. He may state the understanding he had with his associates without stating the precise language used, if he cannot state the language; if he can, he can state it.

Mr. FULTON, for defendants: Then we are bound by his version or conclusion of what the agreement was.

COURT: You are always bound by what a witness states as the substance of a conversation.

To all of which testimony defendants excepted and an exception allowed.

X.

That the said court erred in overruling and not sustaining the defendants' objection to the following questions propounded to the said N. Blum, witness as aforesaid:

Q. When did you go to visit Victoria, if you went?

A. I went to Victoria about the first of July.

Q. Did you see Major Wilson, one of these defendants, there then?

A. Yes, sir.

Q. State what conversation you had with him, if any, touching this business.

A. I talked with him——

Counsel for defendants objects to this testimony on the ground that the defendant Wilson lived in British Columbia, in Canada, and cannot enter into any conspiracy there against the laws of this country. Objection overruled, and an exception allowed.

Q. Go on.

A. Mr. Bannon furnished me with about 20 blank certificates with his name attached to them, purporting to have witnessed the signature of the witnesses, and he also gave me his own seal and the seal of a man by the name of H. L. Rees, whom I have
130 never met, and told me that Rees was out of town and had left the seal in his possession and that we could use it.

Q. You may now go on.

A. I took the two seals and those blank certificates to Victoria, but prior to my going there, possibly ten days or two weeks before that time, I met Mr. Lotan, who was about to take charge of the custom-house as collector of customs here.

Q. Now, before you get to that part of it go on and state what you did in Victoria with Major Wilson.

A. I went to Victoria to Major Wilson, who was the agent of the Merchant Steamship Company, the Dunbar Produce and Grocery Company, and the Oregon Fl-uring Mill Company. I explained

to him that we had made a deal on this side whereby we could land Chinese laborers, and that the three large opium firms over there, Qoung Young, Quon on Lung, and Tai Yuen, were ready to furnish him with pictures; that he should take those pictures and send them over here to Dunbar and myself, giving the names of the Chinamen, their age and description, as near as he could; that we would have certificates made out to turn to them, and that the price for bringing them over and landing them was $120; that upon the receipt of the certificate and issuance of the steamship ticket he was to collect $50; that immediately after the Chinamen were landed on this side we would advise him by wire or letter of the landing, when they were landed, and he must collect the other $70. On the day that I was in Victoria I made out four myself in Major Wilson's presence, in my room in the hotel, for those two Chinese firms, showing him how to make them out, how they were made out, giving him the particulars, and I made out the certificates myself. I took over to Major Wilson at that time a
131 blank ticket book of the Merchant Steamship Company, containing 100 tickets. I issued tickets in Wilson's name, in his office, and entered up the whole proceedings on the stub of the ticket.

XI.

That the said district court erred in its ruling in admitting all those Chinese certificates in evidence, the said certificates purporting to be certificates to procure the landing of Chinamen and purporting to be signed by Glen O. Holman and P. J. Bannon and not marked as exhibits, the ruling of the court being as follows, to wit: If counsel will allow me to interrupt him I desire to make a statement that I desired to make on coming into the court as to these certificates which were offered for admission, the admissibility of which was not formally passed upon. Counsel for some of the defendants say that they are willing that some of the certificates should be admitted and others are not. I have concluded to admit such of the certificates as bear the signature of the defendants or as appear to have been made by them or as contain affidavits purporting to have the jurats of the defendants Holman and Bannon, but no further. To the admission of the said certificates other than those filed as exhibits in the cause the said defendants had objected upon the ground that they were immaterial, irrelevant, incompetent, and had not been identified by any witness as certificates signed by any of the defendants, and to said ruling of the court an exception was at the time saved by the defendants.

XII.

That the said district court erred in admitting the testi-
132 mony of the witness William B. Gilbert as follows, to wit: One of the defendants, Seid Back, after having testified in denial of the allegations of the indictment had been asked upon cross-examination by the court if he had ever acted as interpreter in Chinese

habeas corpus cases before the United States court; if he had not acted as court interpreter before Judge Deady and also before Judge Gilbert. The said defendant, Seid Back, answered no. Thereafter in rebuttal the Government called as a witness William B. Gilbert, who testified that he was circuit judge of the ninth circuit, and was thereupon asked whether there had been any *habeas corpus* cases of Chinamen heard before him. Said question was objected to by the defendants as immaterial and not proper rebutting testimony; their objection was overruled, and defendants excepted. He was then asked, "Do you remember as to who acted as interpreter in those cases?" Same objection was interposed, was by the court overruled, and the defendants excepted; whereupon, after argument, the said witness answered as follows: "The first case I had Seid Back was interpreter; after that Ju Hauk and a man named Rickards, and two or three others were interpreters."

XIII.

That the said court erred in instructing the jury in the charge of the said court that the act of bringing Chinese laborers from British Columbia into this port would constitute an overt act, the said charge being as follows, to wit:

"It is alleged as one of the overt acts of the conspiracy charged that Chinese laborers were unlawfully brought on the steamers mentioned into the United States. The bringing of such persons into the United States is not an unlawful act, nor is it necessary to sustain the charge made that it should be so. It is the landing of such persons and not the act of bringing them here that is unlawful; but a lawful act may be for an unlawful purpose, and it is enough, so far as it relates to an overt act, if Chinese laborers were brought on the Wilmington and Haytian Republic from British Columbia into this port in pursuance of a conspiracy to effect or aid and abet their landing here."

133

XIV.

That the said court erred in charging the jury that if the defendant Bannon issued certificates fraudulently this would tend to charge him with knowledge of the conspiracy and its purposes, said charge being as follows, to wit:

"A Chinese person may be entitled to land notwithstanding the production of fraudulent evidence, but the presumptions are against it. If such persons were not entitled to land you may consider from the time of such landing from the Wilmington and Haytian Republic whether they are the same persons who are referred to in the indictment as having been unlawfully landed. The fact of these fraudulent certificates tends to corroborate Blum as to the existence of a conspiracy to unlawfully land Chinese. It does not, however, tend to connect any particular defendant with such conspiracy unless the jury should be satisfied that Bannon did issue these certificates, as Blum testified, with the knowledge that Blum attributes to him. If such is the fact, then such fraudulent certificates tend to

connect Bannon with the unlawful combination charged. If Bannon fraudulently issued these certificates the tendency of that testimony would be to charge him with knowledge of the use that was to be made of such certificates and with knowledge of the conspiracy; it would not necessarily connect him with the conspiracy, but
134 that would be its tendency."

Wherefore the said C. J. Mulkey and P. J. Bannon and each of them pray that the order and judgment of the said district court of the United States for the district of Oregon be reversed and that the said district court of the United States for the district of Oregon be ordered to enter an order directing the discharge of the said C. J. Mulkey, William Dunbar, and P. J. Bannon and each of them or for a new trial of the said cause of The United States *vs.* C. J. Mulkey, William Dunbar, and P. J. Bannon, and for such other and further relief as may be appropriate.

Portland, Oregon.

RUFUS MALLORY,
Attorney for Defendant and Plaintiff in Error C. J. Mulkey.
ALFRED F. SEARS, JR.,
Attorney for Defendant and Plaintiff in Error P. J. Bannon.

Endorsed: Filed July 17, 1894. R. B. Lamson, clerk.

135 And afterwards, to wit, on the 21st day of July, 1894, there was duly filed in said court a bond on writ of error of C. J. Mulkey in words and figures as follows, to wit:

136 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, H. C. Grady, U. S. marshal for the district of Oregon, hereby certify that, by virtue of the annexed certified copy of bond and at the written request of Curg Hunsaker and R. S. Perkins, bondsmen, endorsed thereon, I did, on the 21st day of July, 1894, arrest and take into my custody the therein-named C. J. Mulkey and took him before *the* R. B. Lamson, clerk of the U. S. district court for the district of Oregon, and he having given a bond approved by said clerk I have discharged him from custody.

Dated this 23rd day of July, 1894.

H. C. GRADY,
U. S. Marshal,
By GEO. HUMPHREY, *Deputy.*

137 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, P. J. BANNON, and C. J. MULKEY *et al.*
No. 3594. Indictment, Section 5440, R. S.

Know all men by these presents that we, C. J. Mulkey, as principal, and Curg Hunsaker, A. C. Southmoyd, and Richard S. Perkins,

as sureties, are held and firmly bound unto the United States of America in the sum of eight thousand dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated July 17th, A. D. 1894.

Whereas the above-named C. J. Mulkey has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named C. J. Mulkey shall prosecute said writ of error to effect and shall personally appear before the district court of the United States for the district of Oregon and then and there abide the judgment of said district court heretofore rendered against him on July 17, 1894, if he shall fail to make good his plea before said Supreme Court, then this obligation shall be void; otherwise to remain in full force and virtue.

C. J. MULKEY. [SEAL.]
CURG HUNSAKER. [SEAL.]
A. C. SOUTHMAYD. [SEAL.]
R. S. PERKINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
R. B. LAMSON.
J. A. SLADEN.

Approved:
R. B. LAMSON, *Clerk.*

138 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Curg Hunsaker, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of six thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

CURG HUNSAKER.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, A. C. Southmayd, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property

situated therein the sum of two thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. C. SOUTHMAYD.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I, Richard S. Perkins, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of eight thousand dollars over
139 and above all my just debts and liabilities, exclusive of property exempt from execution.

R. S. PERKINS.

Subscribed and sworn to before me this July 17, 1894.

R. B. LAMSON.

Endorsed: Filed July 17, 1894. R. B. Lamson, clerk.

To the U. S. marshal:

You are hereby directed to take the herein-named C. J. Mulkey into your custody, that we may be released from liability on the within bond.

CURG HUNSAKER.
R. S. PERKINS.

THE UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I, R. B. Lamson, clerk of the United States district court for the district of Oregon, do hereby certify that the foregoing copy of bond of C. J. Mulkey has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

Seal United States District Court, Oregon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this July 21, 1894.

R. B. LAMSON, *Clerk,*
By —— ——, *Deputy Clerk.*

140 In the District Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
JOHN WILSON, P. J. BANNON, and C. J. MULKEY *et al.*
No. 3594. Indictment, Section 5440, R. S.

Know all men by these presents that we, C. J. Mulkey, as principal, and A. C. Southmead, Carl Bade, and J. A. Millsaps, as sureties, are held and firmly bound unto the United States of America in the sum of eight thousand dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated July 21st, A. D. 1894.

Whereas the above-named C. J. Mulkey has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named C. J. Mulkey shall prosecute said writ of error to effect and shall personally appear before the district court of the United States for the district of Oregon and then and there abide the judgment of said district court heretofore rendered against him on July 17, 1894, if he shall fail to make good his plea before said Supreme Court, then this obligation shall be void; otherwise to remain in full force and virtue.

C. J. MULKEY. [SEAL.]
A. C. SOUTHMAYD. [SEAL.]
CARL BADE. [SEAL.]
J. C. MILLSAPS. [SEAL.]

Signed, sealed, and delivered in the presence of—
R. B. LAMSON.

Approved:
R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

141 UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

I, A. C. Southmayd, being duly sworn, depose and say that I am one of the sureties in the foregoing bond, that I am a resident and householder within said district, and that I am worth in property situated therein the sum of two thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. C. SOUTHMAYD.

Subscribed and sworn to before me this July 21, 1894.
R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Carl Bade, being duly sworn, depose and say that I am one of the sureties in the foregoing bond, that I am a resident and householder within said district, and that I am worth in property situated therein the sum of six thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

CARL BADE.

Subscribed and sworn to before me this July 21, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, J. A. Millsaps, being duly sworn, depose and say that I am one of the sureties in the foregoing bond, that I am a resident and householder within said district, and that I am worth in property situated therein the sum of eight thousand dollars over and
142 above all my just debts and liabilities, exclusive of property exempt from execution, consisting of improved farm, 235 acres, well stocked, in Polk Co., Oregon, unencumbered.

J. A. MILLSAPS.

Subscribed and sworn to before me this July 21, 1894.

R. B. LAMSON,
Clerk United States District Court for the District of Oregon.

Endorsed: Filed July 21, 1894. R. B. Lamson, clerk.

143 And afterwards, to wit, on the 8th day of September, 1894, there was duly filed in said court bill of exceptions in words and figures as follows, to wit:

144 In the District Court of the United States for the District of Oregon.

THE UNITED STATES, Plaintiff,
v.
JOHN WILSON, N. BLUM, WILLIAM DUNBAR, E. P. THOMPSON, W. B. Jackling, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, James Lotan, Thomas Jordan, C. B. Cardinell, C. J. Mulkey, Alex. Ross, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Bow on Chung, Twin Wo Charley, and Chas. Young, Defendants.

Be it remembered that on the 12th day of December, 1893, at the regular term of the United States district court for the district of Oregon, this cause came on to be heard, before Hon. C. B. Bellinger,

district judge, upon a demurrer to the indictment filed herein by counsel for the defendants, Wm. Dunbar, John Ross, Glen O. Holman, P. J. Bannon, J. E. Marks, James Lotan, Thos. Jordan, C. B. Cardinell, C. J. Mulkey, Ching Chong Quie, Seid Back, Chee How, Mon Oak, Too Suet, Moy Ham, Lee Moon, Ding Wing, Lee Wing, Wing John, Twin Wo Charley, and Chas. Young; which demurrer was submitted to the court without argument by counsel and was overruled by the court; to which ruling said defendants, by their counsel, excepted.

Thereupon the said last-named defendants and each of them for himself then and there plead to said indictment, "Not guilty;" and thereupon said cause came on to be tried in said court upon the issues joined by said pleas before the said judge and a jury, and on the trial of said issue the plaintiff, The United States, to maintain the issue on its part, called one Nat. Blum and asked that he, the said Blum, be sworn as a witness on the part of the United States.

It was admitted in open court by counsel for the United States
145 that the said Nat. Blum is one of the defendants in the indictment now before the court; that prior to the date at which he is here called as a witness he, the said Nat. Blum, had been duly arraigned in this cause and court; that said indictment had been duly read to him in open court and he had voluntarily and personally plead that he is "guilty" as charged in said indictment, and that said plea has been duly entered and now stands and is a part of the record of said cause, but that at the time said Blum is so called as a witness no judgment of the court imposing any sentence has been rendered or entered upon said plea of guilty; that upon said Blum being so called as a witness and before he was sworn as a witness counsel for defendants objected to said Blum being sworn upon the ground and for the reason that said Blum has been convicted upon his own confession of an infamous crime against the laws of the United States. The court overruled the objection, and the counsel for defendants duly excepted.

Thereupon said witness, NAT. BLUM, was sworn as a witness, and counsel for the United States propounded to him the following interrogatory:

Q. I will ask you if during the early part of the year 1892 yourself and Wm. Dunbar, one of the defendants, were engaged in any business enterprises together.

A. Yes, sir.

Q. You may state what they were—the business of the firm or copartnership.

Counsel for the defense objects to the question on the ground that the indictment does not charge any offense against the laws of the United States. The court overruled the objection, and counsel for the defendants duly excepted.

A. We had no partnership contract. We were interested in two corporations.

Q. You may state to the court and jury what agreement and

understanding you four (Blum, Dunbar, Jackling, and Thompson) had together there—what you were to do and how you were
146 to do it; just state fully.

A. Well, to explain this matter I will have to go back to the time we commenced running the steamers in British Columbia.

Q. Well, go on and tell it. *Q.* Go right along and tell what agreement you had between these people and yourself.

A. Well, about the first of March, 1892, the steamship Wilmington was owned at that time by William Dunbar, E. P. Thompson, and myself. That was, I think, about the time we operated the Merchants' Steamship Company. It may have been a month or a little more prior to that time; but we started running on the British Columbia route under a freight contract with the Canadian Pacific Railroad Company. We had with the Canadian Pacific Railroad Company a contract to bring all of their Chinamen—Chinese laborers and merchants that they brought from China to Vancouver for Portland.

Counsel for defendants objected to this testimony on the ground, 1st, if the contract is in writing it is best evidence; 2nd, the testimony is immaterial. The court overruled the objection, and counsel for defendants duly excepted.

A. The Merchants' Steamship Company agreed to carry Chinese passengers for the Canadian Pacific railroad from Vancouver to Portland, for which we were to receive $6 per head, and we established a local rate between Vancouver and Portland for Chinese passengers, of, I think, at first $7. We then found that they were coming over here in pretty big numbers, and we also found——

Q. Go right along.

A. After consultation, then, between Dunbar, Jackling, and myself—I would not say that Thompson was there. I don't know. Thompson did not talk to us much at any time, because the management of the steamer was entirely in the hands of Dunbar—we concluded to raise the rate locally to $10. We found that that did not check it any for the reason that the Chinamen coming
147 over here would sue out writs of *habeas corpus* and take——

Counsel for the defendants object to the witness stating what they concluded to do as immaterial. Objection overruled. Defendants except.

A. They detained the ships here, and Mr. Dunbar finally notified our agent or the captain——

Mr. FULTON: I would ask that all this testimony may be received under our objection and considered as objected to, and that will save our making the objection.

COURT: Yes; it may.

Mr. GEARIN: We are satisfied with that, that counsel shall be considered as objecting to all of it and their exception saved.

Q. Go on.

A. The captain of the Wilmington was notified not to take any

more Chinese passengers unless they put up a bond at Vancouver to guarantee the loss of time sustained by the steamer here in landing them. Well, that ran along for a little while, and we then concluded that we wanted to handle all the China business, and we got together and saw where we could form a little trust or monopoly, and we started in figuring the thing up. After talking the thing over considerably we concluded to raise the fare.

(Mr. FULTON:)

Q. Who was this got together?

A. Dunbar and Blum. I am talking about what I said, what Dunbar said, what Jackling said, and all of us. We all got together.

(COURT:)

Q. Well, state what was done.

A. We raised the price to $50 a head—that is, the local fare between Vancouver and Portland—thinking it would probably force them to pay some attention to ourselves. We raised the price to $50, I think, about May, 1892—that is, locally. We hauled white people for $10 in the cabin. First-class Chinamen had to pay $50 in the steerage, and about that time Ching Chong Quie——

148 Q. One of these defendants?

A. Yes, sir; he kind of got into the thing; wanted a little finger in it. We concluded that we would have a lot of Chinese certificates made out, furnish these certificates and probably assist in landing the Chinamen—the laborers—at an expense to those Chinamen of about $100 or $120 a head. Now, that shows you the object in raising our fare to $50.

To all of which counsel for defendants objected as immaterial and incompetent. The court overruled the objection, and counsel for defendants duly excepted.

Q. Before that let me ask you this: When did you go to Victoria, if you went?

A. I went to Victoria about the first of July.

Q. Did you see Major Wilson, one of these defendants, there then?

A. Yes, sir.

Q. State the conversation you had with him, if any, touching this business.

A. I talked with him——

Counsel for defendants object to this testimeny on the ground that the defendant Wilson lived in British Columbia, in Canada, and cannot enter into any conspiracy there against the laws of this country. Overruled. Defendants except.

Q. Go on.

A. Mr. Bannon furnished me with about 20 blank certificates with his name attached to them, purporting to have witnessed the signature of the witnesses, and he also gave me his own seal and

the seal of a man name of H. D. Rees, whom I have never met, and told me that Rees was out of town and had left the seal in his possession and that he could use it.

Q. What kind of a seal was it?

A. Notarial seal.

Q. Go on.

—. I took the two seals to Victoria——

Mr. FULTON: Ought they not to produce those papers and seals to show for themselves?

COURT: Upon what principle, Mr. Fulton?

Mr. FULTON: They are the evidence.

149 COURT: He is not testifying to the contents of those papers, and the contents are wholly immaterial. You want the seal produced so you can see it and know what it is. I will not hear any argument upon that question, Mr. Fulton. You may except if you wish, and you may except to my refusal to allow you to argue the question.

Mr. FULTON: Oh, I do not wish that, your honor. I only want an exception to the admission of the testimony.

Q. You may go on.

A. I took the two seals and those blank certificates to Victoria, but prior to my going there, possibly ten days or two weeks before that time, I met Mr. Lotan, who was about to take charge of the custom-house and collector of customs here.

Q. Now, before you get to that part of it go on and state what you did in Victoria with Major John Wilson.

A. I went to Victoria to Major Wilson, who was the agent of the Merchant Steamship Company, the Dunbar Produce and Grocery Company, and the Oregon Flouring Mill Company. I explained to him that we had made a deal on this side whereby we could land Chinese laborers and that the three large opium firms over there, Quong Young Tai, Quon On Lung, and Tai Yuen, were ready to furnish him with pictures; that he should take those pictures and send them over here to Dunbar and myself, giving the names of the Chinamen, their age and description as near as he could; that we would have certificates made out, to turn to them, and that the price for bringing them over and landing them was $120; that upon the receipt of the certificate and issuance of the steamship ticket he was to collect $50; that immediately after the Chinamen were landed on this side we would advise him by wire or letter of the landing, when they were landed, and he must collect the other $70. On the day that I was in Victoria I made

150 out four myself in Major Wilson's presence in my room in the hotel for those two Chinese firms, showing him how to make them out, how they were made out, giving him the particulars, and I made out the certificates myself. I took over to Major Wilson at that time a blank ticket book of the Merchant Steamship Company containing 100 tickets. I issued tickets in Wilson's name in his office and entered up the whole proceedings on the stub of that ticket.

After the plaintiff had rested its case the defendants called SEID BACK, one of the defendants, who, after being duly sworn as a witness and after having been interrogated regarding his knowledge of the facts of the case, was asked by the court the following questions:

(The COURT.) You were court interpreter, were you not, about those times (referring to the times when Chinese were seeking to be allowed to land through proceedings by *habeas corpus* in the United States district court, when held by Judge Deady, district judge)?

Ans. Yes.

(By the COURT:) You did all the interpreting up here?

A. Yes; mostly for Judge Deady at that time.

(By the COURT:) And before Judge Gilbert, too?

A. No; not before Judge Gilbert.

(By the COURT:) Didn't you interpret before Judge Gilbert?

A. No; I think some of the other China boys did.

(By the COURT:) You swear that you did not interpret before Judge Gilbert?

A. No; not before Judge Gilbert. I have been up here. Paul got some Chinamen to come up here and I went up there; some of the Chinamen wanted me to come up there. I did not interpret.

After the defendants had rested their case the plaintiff, The United States, called W. B. GILBERT as a witness in its behalf in rebuttal, *and*, after being duly sworn as such witness, testified as follows:

151 Question by Dist. Att'y MURPHY: What is your name, Judge?

A. W. B. Gilbert.

Q. What official position do you hold?

A. I am circuit judge of the 9th circuit.

Q. Judge, has there been any *habeas corpus* cases of Chinamen heard before you?

Counsel for defendants objected to the question as immaterial.

The court overruled the objection, and counsel for defendants excepted and the witness answered:

A. Yes; there was quite a number of them heard before me last winter.

Q. Do you remember who acted as interpreter in those cases?

Counsel for defendants objected to the question as immaterial.

The court overruled the objection, and counsel for defendants excepted and the witness answered:

A. The first case I had Seid Back was interpreter; after that Ju Hauk and a man named Rickards and two or three others were interpreters.

Q. About how many cases did Seid Back interpret do you remember?

A. I cannot remember how many cases. He was interpreter

during the morning session; whether it was all of the session or not I do not remember.

Counsel for the defendants thereupon moved to strike out the testimony of this witness because it has no relevancy to the case.

The court overruled the motion, and counsel for the defendants duly excepted.

In response to argument of counsel for the defendants in support of the objection made to this testimony and as reason for overruling the same the court said Mr. Blum testified that it was a part of the arrangement that Seid Back was to interpret on board the ship; that the arrangement was that part of the Chinamen were to be landed through the intervention of the collector of customs
152 and the rest were to be landed through the courts by means of *habeas corpus*. Now, the question is presented whether it is material to enquire whether Seid Back did interpret on the ship or not. I am of opinion that it is relevant to know whether he interpreted in the courts or not. The employment may have been general. There is some testimony showing that he did interpret some on board the ship and this is why the question was asked him. In my judgment the material thing was whether he was employed as interpreter on the ship or otherwise. I will overrule the objection.

On deciding the motion of defendants' counsel to strike out the testimony of this witness the court remarked: (COURT:) "I may say here that I asked the question not in any expectation that Judge Gilbert would be asked the question to contradict the witness, but I asked for my own satisfaction because I was curious to know what answer hé would make on that subject."

After both sides had rested and arguments of counsel were concluded the court charged the jury as follows:

"Section 5440 of the Revised Statutes of the United States provides that if two or more persons conspire either to commit some offense against the United States or to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effect the object of such conspiracy, all the parties to such conspiracy shall be liable to a penalty.

The indictment charges the defendants with having on the 1st day of July, 1892, conspired together to commit an offense against the United States, namely, the offense of aiding and abetting the landing in the United States and in this district from the steamships Wilmington and Haytian Republic, both between the port of Portland, Oregon, and Vancouver, in the province of British Columbia, of Chinese laborers not lawfully entitled to enter the United States, by fu*rnis*hing such laborers false and fraudulent evi-
153 dence of identification and by counselling, advising, and directing such laborers and furnishing them information and advice as to the questions liable to be asked upon their application for admission to land from said vessels and by various other means to the grand jury unknown; that in pursuance of such conspiracy there were on various dates set out in the indictment unlawfully

brought from the province of British Columbia in such steamships and unlawfully landed therefrom at this port large numbers of Chinese laborers whose names are unknown; all of which facts were at the time well known to the defendant-; that on December 5th, 1892, the defendant Holman, in pursuance of such conspiracy and while it existed, did, in order to effect the object of such conspiracy, issue forty-four certificates with his signature and notarial seal attached, which certificates were otherwise left with blank spaces to be filled out by the defendant Blum, who might affix the names of witnesses and deliver such certificates thus fraudulently prepared to such Chinese laborers as he might desire to have unlawfully enter the United States; that the defendant Blum did receive such certificates and did fill them out and cause names to be attached thereto as witnesses and did furnish such certificates to Chinese laborers not entitled to land as he might desire to have landed from said steamers, the names of such Chinese laborers being to the grand jury unknown. The indictment charges the defendant Holman with a second issue of blank certificates, being fifteen in number, for the carrying out of the conspiracy on December 10th, 1892, which were signed but not sealed by him and which are alleged to have been filled out and used by the defendant Blum similarly to the use of those already mentioned.

It is further charged that the defendant Bannon, in furtherance of the conspiracy, did, on July 1st, 1892, prepare and have printed about 500 of such certificates, which were by him signed and
154 sealed with his official seal and delivered to Blum to be filled up and used by him, which was done; that afterwards, on December 5th, 1892, the defendant Bannon, to effect the object of the conspiracy, did issue a second lot of such certificates, to wit, about one hundred, which were delivered to the defendant Dunbar to be by him filled out and delivered to the defendants Ross and Thompson; that they might take them to China and there fill them out and deliver them to Chinese laborers to be unlawfully brought into the United States, and that Dunbar delivered such certificates to Ross for such purpose.

It is alleged as one of the overt acts of the conspiracy charged that Chinese laborers were unlawfully brought on the steamers mentioned into the United States. The bringing of such persons into the United States is not an unlawful act nor is it necessary to sustain the charge made that it should be so. It is the landing of such persons and not the act of bringing them here that is unlawful; but a lawful act may be for an unlawful purpose, and it is enough, so far as it relates to an overt act, if Chinese laborers were brought on the Wilmington and Haytian Republic from British Columbia into this port in pursuance of a conspiracy to effect or aid and abet their landing here.

To constitute a conspiracy under the statute applicable in this case there must have been an agreement between two or more of the defendants to aid and abet the unlawful landing from British Columbia into the United States at this port from the steamers Wilmington and Haytian Republic of Chinese laborers. The aiding

and abetting of such landing is an offense against the United States. It is not necessary that such agreement should be proved to have been made on any particular day. It is enough if it is shown to have been made about the time alleged, and it is not necessary that all those charged to have been parties to the conspiracy or
155 each of them as afterwards participated in it shall have been present when the conspiracy was contrived or originally entered into or shall have been cognizant at the time of what was being proposed. It is enough if at any time while the conspiracy existed they became partakers in it. If there was originally an unlawful agreement as charged entered into by two or more of the defendants and other defendants afterwards or from time to time becoming acquainted with the existence of the unlawful combination and its objects joined it they are responsible, and by joining it is meant some act of participation in it as distinguished from mere passive cognizance of it. In addition to the unlawful agreement mentioned there must have been some act done by one of the parties to the conspiracy to effect its object, and such act must be one of those alleged in the indictment as constituting an act in furtherance of the conspiracy. It is not necessary to render the crime complete that all the overt acts charged in the indictment shall be proved. If the unlawful agreement and one of such acts is established it is sufficient to charge all the defendants who are shown either to have been parties to the agreement originally or (2) to have subsequently participated in what was being done in pursuance of it. The assent of minds to the agreement is an inference which the jury may draw from the other facts in the case; hence the active participation of a defendant in what is being done in pursuance of the agreement with the knowledge of such agreement authorizes an inference that he assented to the agreement. In other words, the case may be established by proof of facts and circumstances, by circumstantial evidence. The acts and declarations of one conspirator during the continuance of the conspiracy and relating to it are admissible against all others. Such acts and declarations are admissible whether the party making them is on trial or not.

156 The indictment alleges that it was part of the conspiracy to effect the unlawful landing charged by furnishing said laborers false, fraudulent, and pretended evidences of identification, and by counselling, advising, and directing them touching the questions liable to be asked them upon their application to land. In pursuance of this arrangement it is alleged that Holman and Bannon issued the several lots of blank certificates already mentioned, which certificates are set out. Blank spaces were left in these certificates to be filled in to suit the requirements of a particular case, with the name of the person to be landed, his place of business, the name of the firm of which he claimed to be a member, and a description of his person. Affidavits were appended to these certificates, purporting to be signed and sworn to by the persons whose names were appended thereto, such names being either fictitious or forged. These affidavits contained the jurats of the nota-

ries with what purports to be their signatures and seals, and which give to the statements contained in the certificate the apparent verification of an oath duly taken.

The indictment further alleges as overt acts in the conspiracy that at different times, in pursuance of such conspiracy, Chinese laborers were brought from British Columbia to this port, which laborers were unlawfully landed from said vessel in this port, none of them having a right to so land, all of which facts were at the time well known to the defendants.

The act of bringing Chinese laborers from British Columbia to this port, as already stated, is not in itself an unlawful act, yet inasmuch as such persons are not entitled to land here, such an act might reasonably be in pursuance of the unlawful scheme to aid and abet their landing, and when it is done as alleged in pursuance of such scheme and with the knowledge of the parties involved in such scheme, it becomes an overt act in the conspiracy. Under
157 such circumstances there is no hypothesis possible that does not involve the parties to the conspiracy having such knowledge in the act so charged. But the indictment goes further and alleges that the laborers which were brought from British Columbia to this port, in pursuance of the conspiracy and with the knowledge of the conspirators, were thereafter unlawfully landed from such vessels at this port with the knowledge of the alleged conspirators. This last act is not alleged to have been in pursuance of the conspiracy and could have been omitted without affecting the sufficiency of the indictment, but, having been alleged, it becomes descriptive of the overt act alleged. It identifies the act and must be proved. In other words, the overt act must be proved with its attendant descriptive facts as alleged. The allegation is that the number and names of Chinese laborers who were brought into the United States in pursuance of the conspiracy are to the grand jury unknown, but they are otherwise identified as having been unlawfully landed from such steamships at Portland on certain dates, to the knowledge of the alleged conspirators. The unlawful landing or the aiding and abetting of such unlawful landing must not be confounded with the conspiracy to so aid and abet. It is the conspiracy to aid and abet such landing that is charged and it is this that must be proved. If the jury should be satisfied that the defendants or any of them have aided and abetted the unlawful landing of Chinese laborers that does not of itself make them guilty of the conspiracy to aid and abet such landing, although such acts might be in pursuance of the conspiracy and would tend to prove its existence.

Counsel for the defendants read in your hearing from a charge to the jury in a conspiracy case of the United States *vs.* Howell, tried in another district, touching the weight to be given the testimony of accomplices, and this court is urged to adopt the rule
158 laid down in such charge in the instructions to govern you in the consideration of the testimony of accomplices in this court. The rule as so read in your hearing states correctly the principles under which you are to consider the testimony of the ac-

complices in the case before you, and I avail myself of so much of such charge as relates to this subject, together with what follows, as to the character — testimony tending to impeach such witnesses by reading it as a part of my instructions to you. (Reads from 56 Federal Reporter, pages 39 to 41.)

The testimony to corroborate that of an accomplice must be free from the objection that applies to that of an accomplice himself. It must come from a source that is free from contamination. The writing of the accomplice if made at a time and under circumstances that preclude any inference that such writings were prepared with a view to their use as evidence may be received to corroborate his testimony. It has been held in obedience to this requirement that conspirators may be corroborated by contemporaneous entries made in their books. So any contemporaneous writings may be similarly used.

In this case the letters of Blum, tending to show the existence of the facts sought to be made out, written to Wilson during the progress of the conspiracy (if there was a conspiracy) are proper to be considered by you. These letters do not come from Blum into the case. They come from the defendant Wilson through independent sources. There is nothing to lead to a suspicion that they were not written at the time they purport to be written or were not written with reference to the transactions to which they relate. It does not appear that at that time Blum could have anticipated their use as evidence. Some of these letters appear to have been part of a correspondence in which the defendant Dunbar participated and this independently of the facts that they disclose tends to
159 connect Dunbar with knowledge of those facts. A number of letters written by Dunbar and so admitted by him are in evidence. Some of these letters refer to other letters in such a way as to make them material for your consideration. These letters tend to corroborate Blum's testimony as to the existence of some arrangement or combination between Blum, Dunbar, Jackling, and Wilson for the importation and landing of Chinese persons in the United States. I leave it to you to judge whether this correspondence is consistent with the business of lawfully landing Chinese persons. If you can reconcile it with any legitimate business conduct on the part of the parties to this correspondence towards each other it is your duty to do so.

If other of the acts alleged of issuing certificates is proved, or if either of the acts of importing Chinese laborers is proved as alleged, the crime is established so far as the overt act is concerned, and it is not necessary that the laborers so landed shall be those to whom these certificates were issued nor that the certificates shall be shown to have been issued, nor that certificates if issued and filled out by Blum were ever used. In other words, if there was originally such an agreement as is alleged between Dunbar, Blum, and Jackling, and if in pursuance of such agreement Chinese laborers were brought into this port from British Columbia, as charged with the knowledge of the defendants, and were afterwards unlawfully landed as alleged, the crime is established as to such of the

defendants as were parties to the agreement originally or as joined the illegal enterprise later.

The evidence in the case is not sufficient to connect the defendants Ross and Marks with the crime charged against them, and as to these defendants your verdict should be one of acquittal. The defendant Holman acknowledges his signature to the certificates in evidence against him. As to two or three of such certificates
160 he is of the belief that his name attached thereto is not genuine. He admits a strong resemblance, however, between these signatures and his writing and bases his belief as to their spuriousness mainly on the fact that a period is placed between the initials O and H in the surname Holman where these letters are connected by a continuous stroke of the pen, which he says is contrary to his habit, but the same characteristic of writing is seen in the signature which he readily recognizes as genuine, thus showing that he is mistaken as to this habit. He also states that he thinks that one of these signatures, although strongly resembling his writing, is not his, because of the fact that the writer began the name on the right hand of the sheet, where letters are usually signed, but where it is not his habit to subscribe his name to jurats on affidavits taken before him, but it is more likely he did this himself unconsciously, than that a forger, presumably imitating the signature upon a genuine affidavit, of which Blum had a large number, did it. I am of opinion that all these signatures are genuine. The fact is, however, quite immaterial, so far as it affects Holman's case, which is not affected one way or the other by the question of the authenticity of two or three signatures out of thirty or forty.

Holman's admission that his signatures upon the certificates in evidence are genuine, and the very reasonable explanation given by him of the circumstances under which these certificates got out of his possession makes the issue one between Blum and such defendants with such corroboration as there is in the case supporting Holman. Moreover, there is a striking resemblance between the two stories, after all, as to the number of certificates, their condition, the possession of Holman's seal by Blum, the amount paid Holman by Blum, the testimony of both in the framework of the story is substantially the same, but in the result the stories
161 are not the same. I do not undertake to say whether one has colored his story to give to an innocent transaction the appearance of crime, or the other had colored a wrongful transaction to give it an appearance of innocence. In such a case with the presumptions which exist in favor of the defendant's innocence and the distrust with which the testimony of an accomplice is received, without intending to express an opinion as to which is right, the case, to say the least, is one of such reasonable doubt as should preclude a conviction. I am therefore of the opinion that you should return a verdict acquitting the defendant Holman of the charge against him.

As to the Chinese defendants, excepting Seid Back and Ching Chong Quie, the evidence tends to show that they applied to Blum,

or Blum, Dunbar, and Jackling, from time to time, to secure the landing of Chinese persons in whom they were interested under circumstances having the effect of compulsion. In some cases there had been threats of legal proceedings by Blum to prevent the landing of Chinese persons by the defendants. There is nothing to show that any of these defendants was in any sense a member of the so-called conspiracy. The testimony tends to show that they were outside parties who did business for themselves with the alleged conspirators, having no share or profit in its enterprise and not shown to have connived at what was being done further than to recognize the fact which they were made to know, that in Dunbar or Blum, either or both, there was a potent force to effect the landing of their countrymen. I am of opinion that you should acquit these defendants. As to the defendant Ching Chong Quie the case is somewhat stronger, although it very much resembles that of the other Chinese defendants just referred to. I leave it to your determination whether the facts in the case warrant you in adjudging them guilty.

There remain the further defendants Dunbar, Mulkey, Lotan, Jordan, Bannon, and Seid Back. As to these, I shall not do
162 more than refer to the general principle that should govern you in your deliberation, and in referring to the facts in this case, I shall only refer to such facts as are admitted by the defendants themselves.

The testimony tends to show that the alleged conspiracy, as originally agreed upon, included Dunbar, Blum, and Jackling, who proposed by fraud and imposition to deceive the collector of customs at the port of Portland with fabricated evidence showing the right to land such Chinese laborers as would pay for such service; that about this time Holman and Bannon were brought into the arrangement; that at a later period the defendants, Mulkey, Lotan, Jordan, and Seid Back, were brought into it. It is admitted that notwithstanding the alleged fact that customs officials, Mulkey and Lotan, had become members of the conspiracy, the practice of procuring certificates of the merchant character of Chinese laborers that were being landed in pursuance of the conspiracy was continued. It is argued that this is inconsistent with the existence of any conspiracy to land Chinese to which these officials were parties.

There is no presumption that if these officers were engaged in such an enterprise they would have abandoned the practice theretofore adopted of requiring evidence of the merchant character of these seeking to land. This might have had the effect to invite suspicion. On the other hand, it may be considered whether the increasing arrivals of Chinese that would naturally result from the enterprise of such a conspiracy would not require great circumspection on the part of those concerned in the landing to prevent suspicion as to what was going on, whether the forms of a rigid examination would not, to say the least, be as important after such an arrangement, as the fact of such an examination was before.

The landing of a ship's load of Chinese passengers without an ex-

amination had with more or less publicity, without scrupu-
163 lous regard to the forms of evidence, might have led to an investigation that would have been fatal to the conspiracy if one existed. The testimony of Lotan is to the effect that prior to the arrival of the ship Danube and the sending here of the interpreter Rickards, about the last of April or the first of May, the collector's method of investigation pursued in the landing of Chinese passengers was to go over the certificate with Pike, the deputy. When they found certificates signed by prominent citizens whose signatures they knew, they would lay such certificates aside and either Pike or some one else would go down to the ship and land the Chinamen named in the certificate. When they were in doubt about the right of the Chinaman to land they would lay the certificate aside and go themselves to see about them. In the meantime, he says, perhaps some one would come in who would want to take out some particular Chinaman, and they would go over the certificates again and those they could not get evidence concerning they would refuse to land. When the Danube came (which was, as I remember the testimony, the last of April or the first of May) with 600 Chinamen on board he went on shipboard for the first time and inaugurated a rigid system of investigation by an examination of the Chinese themselves and of such witnesses as, I take it, might present themselves as witnesses. I do not recall this testimony for the purpose of reflecting upon the collector's method, but I do so in order that you may consider it in its relation to the testimony of the defendants Dunbar and Blum with reference to the use of the $50 or $70 collected from each of the local Chinese passengers in addition to the $50 passenger money charged such passengers. Dunbar, as I recollect his testimony, says that at least $50 was paid in each case to attorneys for their appearance before the collector; subsequently in his cross-examination he said that in some cases
less than $50 was paid to attorneys, and that in such cases
164 he was that much ahead. You may consider, in weighing Dunbar's testimony, why attorneys should have been employed to represent Chinese passengers before the collector, under the methods employed prior to the arrival of the Danube, at the rate of compensation testified to by Dunbar.

The testimony of Lotan shows that up to the arrival of the Danube Chinese passengers were landed mainly upon the evidence of the certificates themselves—in the first instances entirely upon these certificates. A large number of certificates purporting to have been issued by Holman and Bannon are in evidence. The endorsements upon the backs of these certificates show that the Chinese named in such certificates were landed. The testimony of Holman and Bannon is that these certificates were fraudulent; that the Bannon certificates were wholly forged as to Bannon's signature, and that as to the Holman certificates the signature, though genuine, was fraudulently obtained. There is but one conclusion from this testimony, and that is that Chinese were in fact fraudulently landed at this port. I think the inference is authorized from this testimony that the Chinese landed upon these certificates were not merchants, but

laborers. Their landing by fraudulent means points to the conclusion that they were not entitled to land. This is not a conclusion that is absolute. A Chinese person may be entitled to land, notwithstanding the production of fraudulent evidence, but the presumptions are against it. If such persons were not entitled to land, you may consider from the time of such landing from the Wilmington and Haytian Republic whether they are the same persons who are referred to in the indictment as having been unlawfully landed. The fact of these fraudulent certificates tends to corroborate Blum as to the existence of a conspiracy to unlawfully land Chinese. It does not, however, tend to connect any particular defendant
165 with such conspiracy unless the jury should be satisfied that Bannon did issue these certificates, as Blum testified, with the knowledge that Blum attributes to him. If such is the fact, then such fraudulent certificates tend to connect Bannon with the unlawful combination charged. If Bannon fraudulently issued these certificates, the tendency of that testimony would be to charge him with knowledge of the use that was to be made of such certificates and with knowledge of the conspiracy. It would not necessarily connect him with the conspiracy, but that would be its tendency.

The fact of the successful use of these certificates in effecting the landing of Chinese may create an unfavorable inference as to the method of investigation pursued by the collector in the landing of these persons. It may be inferred that large numbers of these certificates bearing the signature of Bannon should have aroused at least enough suspicion to have led to inquiry where inquiry could so easily have been made as to the genuineness of these certificates. The failure to make such inquiry and the ready credence given to this large number of fraudulent certificates is not enough, however, to authorize you to find from that single circumstance alone that the collector was acting unlawfully or from improper motives. If he was acting without due caution, this is not a crime. The fact that he did so act may be considered by you in connection with the other testimony in the case tending to connect the defendant Lotan with the crime charged and in so far as it has a tendency to corroborate such testimony.

Evidence of good character on the part of the defendants has been admitted and is relevant to the question as to whether the defendants are guilty or not guilty. This evidence is introduced for the purpose of inducing you to believe, from the high improbability that a person of good character should have committed the crime charged, that the defendant did not commit the crime with
166 which they are charged. The weight to be given this evidence is a question for you. It does not necessarily follow that because the defendants are men of good character, if you so find them, that they are innocent of the crime with which they are charged. If the rule was otherwise, men of good character would escape punishment by the mere fact of good character. It is a matter that addresses itself to the judgment of the jury as to whether men of good character would be likely to engage in the criminal

acts charged. If, notwithstanding such evidence, the jury still believe they are guilty, it is their duty to so find. If such evidence has the effect to create a reasonable doubt of the defendants' guilt, it is your duty to find them not guilty.

At the defendants' request I further instruct you as follows: You are not to consider the plea of guilty entered by Blum and Jackling as evidence against any defendant but themselves, and you are not at liberty to consider it as evidence of the existence of a conspiracy simply because these two have so pleaded. A conspiracy is formed when two or more persons agree together to commit an offense against the United States; but except as to Jackling and Blum you cannot assume that a conspiracy ever existed, but the Government must prove this independently of the plea of these two defendants. You cannot connect any defendant with the conspiracy by independent declarations of others; he can only be connected with it by his own acts, conduct, or declaration, and until this is established he is not bound by any declarations or statements of others. Even if you should conclude that the letters offered in evidence purporting to be Mulkey's were truly his, you would not be at liberty to consider the allusion in them to "Jim" as in any way connecting Mr. Lotan with the conspiracy, for even admitting "Jim" to mean Mr. Lotan a defendant must have connected himself with the conspiracy; he cannot be dragged in by others.

167 That refers to the testimony tending to connect Lotan with the conspiracy; then these declarations in the letters of Mulkey, if you should conclude that they are the letters of Mulkey and that Mulkey was in the conspiracy, will be considered by you, and the references in these letters to "Jim" will be considered by you (if you think the circumstances justify you in drawing that inference) as justifying the inference that they do refer to him, but not alone. They cannot be used to connect Mr. Lotan with the crime. He must be otherwise connected with it, and when it appears that Mulkey was connected with it and that he wrote these letters, then you may consider all the references in these letters and draw such inferences from them—so far as this defendant is concerned or as Lotan is concerned or as any other defendant shown by independent testimony to be connected with the conspiracy is concerned—as the circumstances justify in your mind.

Where the prosecution in a criminal case relies upon circumstantial evidence the facts or circumstances which are to be used or considered must be proved to be true or to exist beyond a reasonable doubt. Each essential circumstance must be established to the same extent as if the whole issue rested on the truth of such essential circumstance.

It is difficult to explain to you, gentlemen, what is meant by a reasonable doubt. A reasonable doubt is such a doubt as arises on the consideration of the testimony in the case; such a doubt as makes you hesitate—as, in other words, is reasonable. It is not every doubt that is a reasonable doubt. You are not to find beyond a possibility of a mistake, on the one hand, nor are you to find upon a mere preponderance of the evidence, upon the other; but

there must be such a strong preponderance of the evidence as to put your minds in the condition that you can say that you are reasonably certain of the conclusions you have reached. You may have
168 some doubt; you may think possibly the defendants are not guilty, but that is not a reasonable doubt. It is impossible to be absolutely certain in many of the affairs of life, especially in the determination of those questions where error is so apt to creep in, and the most, therefore, you can do is to find upon the strong probabilities—upon such strong probabilities as exclude a reasonable doubt.

Without a corrupt agreement or understanding on the part of the defendant there can be no conspiracy as to him. Mere suspicion on the part of the defendant of the existence of the facts—that is, of the conspiracy—is not enough. Passive knowledge of the facts is not enough. There must be something which amounts to active participation in the conspiracy. I have already instructed you upon that point.

You may find these defendants, all of them, are guilty or are not guilty, or you may find that some of them are guilty and others not guilty, or if after deliberation you are able to agree as to some but are not able to agree as to the others, then you may find as to those concerning whom you are agreed and as to the others you may report to the court your inability to agree upon a verdict.

Counsel for defendants duly excepted to the following charge and the exception was allowed by the court: "A Chinese person may be entitled to land notwithstanding the protection of fraudulent evidence, but the presumptions are against it. If such persons were not entitled to land, you may consider from the time of such landing from the Wilmington and Haytian Republic whether they are the same persons who are referred to in the indictment as having been unlawfully landed. The fact of these fraudulent certificates tends to corroborate Blum as to the existence of a conspiracy to unlawfully land Chinese. It does not, however, tend to connect any particular defendant with such conspiracy unless the jury
169 should be satisfied that Bannon did issue these certificates, as Blum testified, with the knowledge that Blum attributes to him. If such is the fact, then such fraudulent certificates tend to connect Bannon with the unlawful combination charged. If Bannon fraudulently issued these certificates, the tendency of that testimony would be to charge him with knowledge of the use that was to be made of such certificates and with knowledge of the conspiracy. It would not necessarily connect him with the conspiracy, but that would be its tendency."

The foregoing bill of exceptions is examined and allowed by the court this Sept. 8, 1894.

(Signed) CHARLES B. BELLINGER,
U. S. District Judge, District of Oregon.

Endorsed: Filed Sept. 8, 1894. R. B. Lamson, clerk.

170 And afterwards, to wit, on Saturday, the 8th day of September, 1894, the same being the 60th judicial day of the

regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

171 In the District Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* JOHN ROSS, P. J. BANNON, C. J. MULKEY, *et al.*	No. 3594.	Indictment, Section 5440, R. S.

SEPTEMBER 8, 1894.

Now, at this day, comes the plaintiff, by Mr. John M. Gearin, special counsel, and the defendants P. J. Bannon and C. J. Mulkey, by Mr. Rufus Mallory, of counsel; and thereupon, upon application of said defendants and upon good cause shown to the court, it is ordered that the time allowed said defendants within which to file in the Supreme Court of the United States the transcript upon the writ of error issued to the district court of the United States for the district of Oregon in this cause be, and the same is hereby, extended for a period of ten days.

(Signed) CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed September 8, 1894. R. B. Lamson, clerk.

172 UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

I, Roswell B. Lamson, clerk of the district court of the United States for the district of Oregon, do hereby certify that the foregoing pages, numbered one to 171, inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the cause of The United States, plaintiff, and John Wilson, P. J. Bannon, and C. J. Mulkey, *et al.*, *are* defendants, as the same appear of record in my office and in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this September eleventh, A. D. 1894

[Seal United States District Court, Oregon.]

ROSWELL B. LAMSON,
Clerk of said District Court.

Endorsed on cover: Case No. 15,691. Oregon D. C. U. S. Term No., 807. P. J. Bannon and C. J. Mulkey, plaintiffs in error, *vs.* The United States. Filed September 26, 1894.

Supreme Court of the United States

October Term, 1895.

P. J. BANNON AND C. J. MULLEY,
PLAINTIFFS IN ERROR,
v.
THE UNITED STATES.

No. [illegible]

In Error to the District Court of the United States for the District of Oregon.

Brief for Plaintiff in Error Mulley

A. T. BRITTON,
A. B. BROWNE,
Attorneys for Plaintiff in Error Mulley.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1895.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

P. J. BANNON AND C. J. MULKEY,
PLAINTIFFS IN ERROR,
v.
THE UNITED STATES.

No. 807.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR PLAINTIFF IN ERROR MULKEY.

STATEMENT.

Plaintiff in error Mulkey was indicted jointly with twenty-five others, by the Federal grand jury for the District of Oregon, for an alleged conspiracy to "commit an offence against the United States" in "aiding "and abetting the landing in the United States" of Chinese laborers in violation of the Chinese exclusion acts. Such indictment was dated and returned on December 6, 1893. Most of these indicted persons were arrested on the same day, several being returned as not

found. On December 8, the persons thus apprehended, with the exception of one N. Blum and one W. B. Jacklin, appeared by counsel in open court and demurred to the indictment as not setting forth facts sufficient to constitute a crime or offence against the laws of the United States (Rec. 12), the said Blum and Jacklin then appearing and pleading guilty thereto. Such demurrers were on that day overruled and the defendants thus apprehended, with the two exceptions noted, plead not guilty (Rec. 14). On motion of the United States, the case was set for trial December 12, 1893, OR WITHIN FOUR DAYS from the date of such pleading. Beginning on December 12, the trial proceeded (Rec. 16) against twenty of the defendants, and was concluded on December 23, when the jury rendered verdict, finding plaintiffs in error, with one Dunbar, "guilty as charged in the indictment," and rendered verdict of acquittal of all others except James Lotan and Seid Back, as to whom the jury were unable to agree (Rec. 22).

Within the time allowed therefor motions for new trial were severally filed on behalf of plaintiffs in error, which were heard, and on March 24, 1894 (Rec. 25), denied. Thereupon (Rec. 39) plaintiff in error Mulkey was sentenced by the court to pay a fine of five thousand dollars ($5,000), and suffer imprisonment for the term of one year, and plaintiff in error Bannon was likewise sentenced to imprisonment for the term of six months. To review this judgment this writ of error is brought.

ASSIGNMENT OF ERRORS.

These appear at length in the record (pp. 45–54).

Errors No. 1 and 2, as thus assigned, substantially aver that the indictment fails to charge plaintiff in error

Mulkey with any acts which constitute any crime at common law or under any statute of the United States. The points to be here discussed under this assignment may be particularized thus:

FIRST. The indictment is fatally defective in failing to aver that plaintiff in error Mulkey *feloniously* conspired.

SECOND. The indictment is fatally defective in that it does not charge that said plaintiff in error Mulkey committed any act which connected him with the alleged conspiracy.

ARGUMENT.

I.

THE INDICTMENT IS FATALLY DEFECTIVE IN FAILING TO AVER THAT PLAINTIFF IN ERROR MULKEY FELONIOUSLY CONSPIRED.

Section 5440 of the United States Revised Statutes provides:

"If two or more persons conspire either to commit any "offence against the United States, or to defraud the "United States in any manner or for any purpose, and "one or more of such parties do any act to effect the "object of the conspiracy, all the parties to such con- "spiracy shall be liable to a penalty of not less than one "thousand dollars and not more than ten thousand dol- "lars, and to imprisonment not more than two years."

By act of May 17, 1879 (21 Stats., p. 4), this penalty is changed to read after the word "penalty" as follows:

"Of not more than $10,000, or to imprisonment for not "more than two years, or to both fine and imprisonment "in the discretion of the Court."

This Court in *Mackin* v. *United States* (117 U. S. 348) held (pp. 362, 353) that, inasmuch as the punishment prescribed by this section was imprisonment for more than one year, it was infamous and hence a felony. Therefore the punishment provided in section 5440 for the crime of conspiracy constitutes a felony.

Section 5440 does not in terms declare the offence thereby punished to be a felony, but the extent of the punishment provided thereby for the crime of conspiracy renders such offence a felony under the law. In *United States* v. *Staats* (8 How. 41) this Court said (p. 44):

"In all cases of felonies at common law, and some, also, "by statute, the felonious intent is deemed an essential "ingredient in constituting the offence; and hence the "indictment will be defective, even after verdict, unless "the intent is averred. The rule has been adhered to "with great strictness; and properly so, where this intent "is a material element of the crime."

After citing from Blackstone, the opinion proceeds:

"This view accounts for the necessity of the averment "of a felonious intent in all indictments for felony at "common law; and, also, in many cases when made "so by statute; because, if it is used, in the sense of the "law, to denote the actual crime itself, the felonious in-"tent becomes an essential ingredient to constitute it. "The term signifying the crime committed, and not the "degree of punishment, the felonious intent is of the "essence of the offence; so much so as the intent to maim, "or disfigure, in the case of mayhem, or to defraud, in "the case of forgery, are essential ingredients in consti-"tuting these offences."

Coke's Littleton, Vol. 3, p. 574, declares that "*felonice* "cannot be expressed by any other word."

In the indictment under consideration it is not

charged that the defendants *feloniously* conspired. As the offence of conspiracy, when against the Government, is a felony at common law and, by reason of the punishment imposed as heretofore shown, is made a felony by section 5440, *supra*, it is essential that the indictment charge that the defendants feloniously conspired. The only exception which is made by the rulings of this Court to the necessity for the word "feloniously" being used is that which is laid down in the case of the *United States* v. *Staats*, *supra*. In that case the statute itself designated in express terms that the offence was a felony. The Court held that in view of this express designation it was not necessary to use the word "feloniously" in the indictment, because the statute used it in characterizing the offence. But the Court admitted, as shown by the quotation *supra*, that in all other cases where the statute did not thus expressly state that the offence was a felony, an indictment which omitted this designation of the offence was fatally defective. A conspiracy which is not entered into with felonious intent is not known to the penal law, and neither the common law nor the statute makes provision for its punishment. The defendants might be found guilty of a conspiracy without being subject to any punishment, but if found guilty of a *felonious* conspiracy they come within the provisions of section 5440, *supra*, and are subject to the punishment therein provided for.

It is manifest that as the indictment in question is based solely upon the conspiracy to commit an offence, the gravamen of the charge consists solely in the conspiracy alleged. That is the crime to which section 5440 relates and for which it provides punishment. The crime here charged is conspiracy alone. That, by its resulting punishment, is clearly a felony. Hence to make an offence a

felony and one prohibited and punished by section 5440 it is necessary to charge that the defendants had "feloniously" conspired.

That this is so, is more apparent when it is remembered that where a statutory felony is also a felony at common law every ingredient of the felony must be charged with certainty, and without the felonious intent there can be no felony. All courts in this country and in England have agreed that no other word but "felonious" can express the intent which makes the crime a felony, unless the statute provides that the commission of the act constitutes the felonious intent.

This principle is analogous to that laid down by this Court in the case of *United States* v. *Carll* (115 U. S., p. 611). In that case the indictment charged that the defendant "feloniously and with intent to defraud" passed certain counterfeit bills, but omitted to charge that he did so "knowingly." This Court held:

> "knowledge that the instrument is forged and counterfeited is essential to make out the crime; and an uttering, with intent to defraud, of an instrument in fact counterfeit, but supposed by the defendant to be genuine, though within the words of the statute, would not be within its meaning and object."

Thus the word "knowingly" was deemed essential to sufficiently describe the crime, and its absence was fatal to the indictment. In the case at bar the word "feloniously" is even more essential, as no conspiracy can be a crime without a felonious intent. In no case which has come before this Court or the inferior Federal courts has it been denied that the word "feloniously" was necessary to be averred in all cases where the indictment charged a

felony, except where the statute in terms makes the offence a felony. In the cases where the omission of this word was pleaded, the courts have held that if the offence was but a misdemeanor its absence was immaterial, but admitted that in felonies it was essential to constitute an offence made a felony.

United States v. *Lancaster*, 2 McLain, 431.
United States v. *Prescott*, 2 Biss. 325.
United States v. *Shepherd*, 1 Hughes, 520.

Speaking to the same point, this Court, in the case of *United States* v. *Mills* (7 Pet. 138, 142), said:

"The general rule is that in indictments for misde-
" meanors created by statute it is sufficient to charge the
" offence in the words of the statute. There is no techni-
" cal nicety as to form, which seems to have been adopted
" and sanctioned by long practice in case of felony, and
" with respect to some crimes where particular words must
" be used and no other words, however synonymous they
" may seem, can be substituted. But in all cases the
" offence must be set forth with clearness and all neces-
" sary certainty to apprise the accused of the crime with
" which he stands charged."

II.

THE INDICTMENT IS FATALLY DEFECTIVE IN THAT IT DOES NOT CHARGE THAT PLAINTIFF IN ERROR MULKEY COMMITTED ANY ACT WHICH CONNECTS HIM WITH THE ALLEGED CONSPIRACY.

The VI Amendment to the Constitution provides, among other things, that the accused shall be "informed of the " nature and CAUSE of the accusation."

In the case at bar the nature of the accusation is a con-

spiracy to commit an offence against the United States. As heretofore shown, a conspiracy of this character is an infamous crime, and therefore the accused can only be held to answer under an indictment as provided in the V Amendment to the Constitution, and by the VI Amendment he must be informed of the CAUSE of the accusation. Speaking of this last-mentioned clause of the Constitution, Chief Justice Marshall, in an opinion rendered on a motion to introduce certain evidence in the trial of Aaron Burr for treason, August 31, 1807 (4 Cranch, appendix, Ed. 1812, p. 501), said:

"The accused cannot be truly said to be 'informed of
" 'the nature and cause of the accusation' unless the in-
" dictment shall give him that notice which may reason-
" ably suggest to him the point on which the accusation
" turns, so that he may know the course to be pursued
" in his defence."

On page 489 of the same opinion the great Chief Justice further observes:

" A description of the particular manner in which the war
" was levied seems also essential to enable the accused to
" make his defence. The law does not expect a man to
" be prepared to defend every act of his life which may
" suddenly and without notice be alleged against him. In
" common justice, the particular fact with which he is
" charged ought to be stated, and stated in such a man-
" ner as to afford a reasonable certainty of the nature of
" the accusation, and the circumstances which will be
" adduced against him. The general doctrine on the
" subject of indictments is full to this point. Foster,
" page 149, speaking of the treason of compassing the
" king's death, says: 'From what has been said it follow-
" 'eth that in every indictment for this species of treason,
" ' and, indeed, for levying war and adhering to the king's
" ' enemies, an overt act must be alleged and proved. For

" ' the overt act is the charge to which the prisoner must
" ' apply his defence.'

" In page 220 Foster repeats this declaration. It is
" also laid down in Hawk. b. 8, c. 17, Sec. 29; 1 Hale,
" 121; 1 East, 116, and by the other authorities cited,
" especially Vaughan's case. In corroboration of this
" opinion, it may be observed that treason can only be
" established by the proof of overt acts, and that by the
" common law, as well as by the statute of 7 of William
" III, those overt acts only which are charged in the in-
" dictment can be given in evidence, unless, perhaps, as
" corroborative testimony after the overt acts are proved.
" That clause in the Constitution, too, which says that in
" all criminal prosecutions the accused shall enjoy the
" right ' to be informed of the nature and cause of the
" ' accusation,' is considered as having a direct bearing
" on this point. It secures to him such information as
" will enable him to prepare for his defence."

On this subject Judge Story, in his work on the Constitution (sec. 1785), says, in reviewing this amendment:

" The indictment must charge the time and place, the
" nature and circumstance of the offence with clearness
" and certainty, so that the party may have full notice of
" the charge and be able to make his defence with all rea-
" sonable knowledge and ability."

In *United States* v. *Cook* (17 Wall. 168, 174) this Court said:

" With rare exceptions, offences consist of more than
" one ingredient, and in some cases of many, and the rule
" is univeral that every ingredient of which the offence is
" composed must be accurately and clearly alleged in the
" indictment, or the indictment will be bad, and may be
" quashed on motion, or the judgment may be arrested, or
" be reversed on error."

In re Greene (52 Fed. Rep. 104, 112) Mr. Justice Jackson said:

" Whether the accused is charged with an offence is to " be determined by the particular acts or facts set forth, " and not by the conclusions of the pleader, although as- " serted in the words of the statute."

Throughout the whole indictment there is no charge, beyond the general allegation of conspiracy, with which the indictment opens, that plaintiff in error Mulkey did any act showing or tending to show his participation in the conspiracy alleged. No detail of place or circumstance is averred against him in any manner or to any intent. Under the loose allegations of this indictment it was impossible for plaintiff in error Mulkey to draw therefrom the slightest information as to when or how he was charged with any act or acts establishing his connection with the conspiracy alleged. It was impossible for him to find upon the face of the indictment a single specific act or thing charged against him personally which he was called upon to defend or to connect him with the alleged conspiracy. An indictment of such substance could be found against any innocent person, and being blind to the last degree with respect to the details charged against him it would be impossible for him to prepare a defence. In point of fact and of law, the indictment could as well have alleged that the writer of this brief was guilty of the alleged conspiracy without in any manner more fully acquainting him than it did plaintiff in error Mulkey of any facts or circumstances which in near or remote degree tended to show his connection with the alleged crime, or that he in any way, manner, or form, consented to or at any time became in anywise connected with the conspiracy averred. Moreover, every detail of fact alleged by the indictment whereby the object of the alleged conspiracy was to be consummated wholly fails to name the plaintiff in error Mulkey as in any way connected therewith or as-

senting therein. The facts charged against him should have been embodied in this indictment in such manner as to apprise plaintiff in error Mulkey of the grounds on which he was charged with joining in the conspiracy alleged. The necessity for this particularity was wholly overlooked by the trial Judge. In his opinion denying motion for new trial he declares (Rec. 28):

"In this case *all* the acts of the defendants constituting " the offence charged are particularly described."

This is manifestly untrue with respect to plaintiff in error Mulkey. No single act of Mulkey is named in the indictment, and " all the acts of the defendants constitut- " ing the offence charged " in no manner or form relate to him or embrace him in language or intent, and no act charged leads to even a presumption that any conspiracy existed. The Honorable Judge does not appear to distinguish between statements of overt acts required to be stated by the statute and acts which tend to show that a conspiracy existed. It should be remembered that the proceedings were under a statute punishing conspiracy, not one punishing the landing of Chinese laborers; and that, no matter how minutely the details were given relating to the bringing and landing of the Chinese, it would not be any notification to one who was to be tried for conspiracy. The defendants were not on trial for bringing or landing Chinese laborers, and one act committed by one conspirator was all that the statute required to be stated, and that act only needed to be one to effect the object of the conspiracy. But, before this overt act was stated, the strict law of criminal pleading, and the Constitution, required that some act be charged to inform the defendant the reason why he was charged with the crime he was held to answer. Being informed of some overt

criminal liability therefor, and no connection with the alleged conspiracy. The mere charge of the indictment that plaintiff in error Mulkey had knowledge of the landing without in any manner imputing to him such knowledge in a criminal sense, cannot support the indictment against him.

The opinion of the trial Court in denying the motion for new trial recites (Rec., pp. 31–33) the testimony of Blum (who had appeared and plead guilty prior to the trial) as to the existence of alleged letters and memorandum alleged to have been written by plaintiff in error Mulkey to Blum. As this trial occurred within less than one week after return of the indictment, it is certain that the Government was in full possession of Blum's testimony (his name appears as the *first* witness in the indictment) and of these letters alleged to have been written by plaintiff in error Mulkey before the indictment was brought. With this information in its possession it was both practicable and necessary that, in framing this indictment, the acts committed by Mulkey, to constitute the *resulting* charge of conspiracy as against him, should have been recited quite as much as the facts and details which are given, in the indictment, in charging overt acts with respect to other of the indicted persons, whose acts are thus set forth both individually and as between themselves. The very fact that such detail is given with respect to some demonstrates that plaintiff in error Mulkey should have been directly charged with the acts on which the Government relied to sustain the charge of conspiracy as against him. Upon any other rule or principle gross and manifest injustice would result. Both in morals and in law the thinking mind must condemn such course of procedure. An indictment which withholds from the knowledge of some of the indicted persons the facts on which the bare

charge against them is based (*without proof of which facts the charge could not on subsequent trial be maintained against them*) is bad as matter of law and directly contrary to all principles of justice and fair dealing. The constitutional guarantee (amendments, art. VI) that the accused must be "informed of the nature and *cause* "of the accusation" plainly means, in its relation to this case, that the indictment should state how and why plaintiff in error Mulkey was charged with any connection with this alleged conspiracy. The word "cause," as used in the Constitution, means all of this and cannot mean less. In this respect it is synonymous with "reason why" and means in this case that plaintiff in error Mulkey was entitled to be informed by the indictment of how and why he was charged with the alleged crime of conspiracy. By the indictment he is simply charged with the knowledge of the fact that these Chinese laborers were unlawfully landed. That *per se* does not charge him with any crime. He is entitled to know the "cause" or "reason why" he is brought in connection with the conspiracy alleged. This the indictment wholly fails to do, and tested by the fundamental law of the land and its judicial construction *supra*, exclusive of all other considerations, this indictment was insufficient to charge him with the commission of an offence.

In *United States* v. *Cruikshank et al.* (92 U. S. 542) this Court said (p. 557):

"In criminal cases prosecuted under the laws of the "United States the accused has the constitutional right "'to be informed of the nature and cause of the accusa-"'tion.' Amend. VI.

"In *United States* v. *Mills* (7 Pet. 142) this was con-"strued to mean that the indictment must set forth the "offence 'with clearness and all necessary certainty to

" ' apprise the accused of the crime with which he stands
" ' charged ; ' and in *United States* v. *Cook* (17 Wall. 174)
" that ' every ingredient of which the offence is composed
" ' must be accurately and clearly alleged.' It is an ele-
" mentary principle of criminal pleading that where the
" definition of an offence, whether it be at common law or
" by statute, ' includes generic terms, it is not sufficient
" ' that the indictment shall charge the offence in the
" ' same generic terms as in the definition ; but it must
" ' state the species—it must descend to particulars ' (1
" Arch. Cr. Pr. and Pl. 291). The object of the indict-
" ment is, first, to furnish the accused with such a de-
" scription of the charge against him *as will enable him to*
" *make his defence* and avail himself of his conviction or
" acquittal for protection against a further prosecution
" for the same cause ; and, second, to inform the court of
" the facts alleged so that it may decide whether they are
" sufficient in law to support a conviction if one should be
" had. For this facts are to be stated, not conclusions of
" law alone. A crime is made up of acts and intent ; and
" these must be set forth in the indictment with reason-
" able particularity of time, place, and circumstances.

" It is a crime to steal goods and chattels, but an indict-
" ment would be bad that did not specify with some degree
" of certainty the articles stolen. This because the accused
" must be advised of the essential particulars of the charge
" against him, and the court must be able to decide
" whether the property taken was such as was the subject
" of larceny. So, too, it is in some States a crime for
" two or more persons to conspire to cheat and defraud
" another out of his property, but it has been held that an
" indictment for such an offence must contain allegations
" setting forth the means proposed to be used to accom-
" plish the purpose. This, because, to make such a pur-
" pose criminal, the conspiracy must be to cheat and
" defraud in a mode made criminal by statute ; and as all
" cheating and defrauding has not been made criminal, it
" is necessary for the indictment to state the means pro-
" posed, in order that the court may see that they are in
" fact illegal. (*State* v. *Parker*, 43 N. H. 83 ; *State* v.

" *Keach*, 40 Vt. 118; *Alderman* v. *The People*, 4 Mich. 414; " *State* v. *Roberts*, 34 Me. 32.) In Maine it is an offence " for two or more to conspire with the intent unlawfully " and wickedly to commit any crime punishable by im- " prisonment in the State prison (*State* v. *Roberts*); but " we think it will hardly be claimed that an indictment " would be good under this statute which charges the " object of the conspiracy to have been 'unlawfully and " 'wickedly to commit each, every, all and singular, the " 'crimes punishable by imprisonment in the State prison.' " All crimes are not so punishable. Whether a particular " crime be such a one or not is a question of law. The " accused has, therefore, the right to have a specification " of the charge against him in this respect, in order that " he may decide whether he should present his defence " by motion to quash, demurrer, or plea; and the court, " that it may determine whether the facts will sustain the " indictment. So here, the crime is made to consist in " the unlawful combination with an intent to prevent the " enjoyment of any right granted or secured by the Con- " stitution, &c. All rights are not so granted or secured. " Whether one is so or not is a question of law, to be " decided by the court, not the prosecutor. Therefore, " the indictment should state the particulars, to inform " the court as well as the accused. It must be made to " appear—that is to say, appear from the indictment, with- " out going further—that the acts charged will, if proved, " support a conviction for the offence alleged."

In *Evans* v. *United States* (153 U. S. 584) this Court said:

" Even in the cases of misdemeanors the indictment " must be free from all ambiguity and leave no doubt in the " minds of the accused and the Court of the exact offence " intended to be charged; not only that the former may " know what he is called upon to meet, but that upon a " plea of former acquittal or conviction the record may " show with accuracy the exact offence to which the plea " relates. (*United States* v. *Simmons*, 96 U. S. 360;

" *United States* v. *Hess*, 124 U. S. 483; *Pettibone* v. *United* " *States*, 148 U. S. 197; *In re Greene*, 52 Fed. Rep. 104.)"

In *United States* v. *Britton* (108 U S. 199, 204) this Court said:

" The offence charged in the counts of this indictment " is a conspiracy. This offence does not consist of both " the conspiracy and the acts done to effect the object of " the conspiracy, but of the conspiracy alone. The pro- " vision of the statute, that there must be an act done to " effect the object of the conspiracy, merely affords a *locus* " *penitentiæ*, so that before the act done either one or all " of the parties may abandon their design, and thus avoid " the penalty prescribed by the statute. It follows, as a " rule of criminal pleading, that in an indictment for con- " spiracy under Section 5440 the conspiracy must be " sufficiently charged, and that it cannot be aided by the " averments of acts done by one or more of the conspirators " in furtherance of the object of the conspiracy. (*Reg.* v. " *King*, 7 O. B. 782; *Commonwealth* v. *Shedd*, 7 Cush. " 514.)"

In *Pettibone* v. *United States* (148 U.S. 197, 202), which involved an indictment for conspiracy under sec. 5440, this Court said:

" The general rule in reference to an indictment is that " all the material facts and circumstances embraced in the " definition of the offence must be stated, and that, if any " essential element of the crime is omitted, such omission " cannot be supplied by intendment or implication. The " charge must be made directly and not inferentially or by " way of recital. (*United States* v. *Hess*, 124 U. S. 483, " 486.) And in *United States* v. *Britton* (108 U. S. 199) " it was held, in an indictment for conspiracy under sec- " tion 5440 of the Revised Statutes, that the *conspiracy* " must be sufficiently charged, and cannot be aided by " averments of acts done by one or more of the conspir- " ators in furtherance of the object of the conspiracy."

In re Benson (58 Fed. Rep. 962, 970) the District Judge, in ruling upon sec. 5440, observes :

" The authorities produced on their side " (the U. S.) " are overborne by decisions which establish for all United " States Courts the rule that an indictment, to be valid, " must tender an issue of fact by setting forth the acts " constituting the *particular crime* which the grand jury " intend to charge."

It cannot be held in this case that the laying of the overt acts in the indictment were sufficient to put the defendant on notice of what he had to defend. Nor can it be held that such overt acts were the cause of the defendant being charged with the conspiracy, because they indicated that the conspiracy existed.

The distinction between the common-law offence of conspiracy and this statutory conspiracy lies in the provisions (1) that the conspiracy must be to commit some statutory offence; (2) that one of the parties to the conspiracy must perform some act to effect the object of the conspiracy. Thus it is clear that the only conspiracy which is made an offence by Federal statute is that which is formed to commit some act prohibited by statute.

Thus the United States, while in no way changing the offence of conspiracy as known to the common law, simply restricts punishment for conspiracy to those cases where it is entered into with the object of committing an offence against law. A conspiracy to boycott a certain tradesman, while an offence at common law, would not be illegal by Federal law, because there is no statute which makes boycotting a crime.

From all that has been said it is clear that an indictment for the character of conspiracy defined by section 5440 must as fully inform a defendant " of the nature and cause

" of the accusation " as an indictment for any conspiracy known at common law.

Simply because the section 5440 limits the offence to only such conspiracies as are formed to commit a prohibited offence, does not relieve the Government of the necessity of charging the offence as other conspiracies at common law must be charged and as all felonies must be charged. Not only is there no provision in any statute which permits the indictment under section 5440 to omit that certainty required in charging all other crimes, but the constitutional amendment expressly places a bar to any such omission and guarantees that a defendant will not be subjected to an infamous punishment, unless he be informed of the CAUSE of the accusation.

It has been claimed, no doubt, by those who have not fully considered the question that if the overt acts are fully set out, the defendant is apprised of the cause of the accusation. This would be nearer true, though still not true, were the offence conspiracy at common law and if the rigorous English rule prevailed in this country, but section 5440 expressly requires these overt acts to be laid in the indictment aside from any connection with the unlawful agreement. In other words, it requires the Government not only to allege facts which show the unlawful agreement, but compels it to allege facts performed by one of the conspirators to effect the object of the conspiracy. But it is by no means enough to hold that the laying of the overt acts is sufficient both to satisfy the common law in charging the unlawful agreement and the statute in charging the overt acts. Acts to show the conspiracy are far different from acts to effect the object of the conspiracy, as the latter cannot be performed until the conspiracy is concluded, and hence do not indicate its formation.

The place in which the alleged conspiracy is charged to have been entered into is "in the district of Oregon and "within the jurisdiction of this Court."

In the Burr case, *supra*, Chief Justice Marshall said:

"The place in which a crime is committed is essential "to an indictment were it only to show the jurisdiction of "the Court. It is also essential for the purpose of en- "abling the prisoner to make his defence. That at com- "mon law an indictment would have been defective "which did not mention the place in which the crime "was committed, can scarcely be doubted. For this it is "sufficient to refer to *Hawkins'* Book 2, chap. 25, sec. "84, and chap. 23, sec. 91."

The district in which it is alleged this conspiracy was formed comprises an entire State—Oregon—and that State contains 96,000 square miles, with some hundred and twenty-five miles of sea-coast. Yet this indictment does not notify plaintiff in error Mulkey at what point in said district he became a party to the conspiracy. Can it be held that this indefinite description comes within the guarantee of the Constitution which requires that the accused shall be informed of the cause of the accusation? Does it comply with that certainty of place which Chief Justice Marshall lays down as essential to an indictment? Does it come within the long-established requirement, upheld by this Court and every other court in this country, when a felony is charged?

In *United States* v. *Reid* (12 How. 361) this Court recites the conditions and circumstances under which the colonists, in framing the Federal Constitution, were influenced by the experience in criminal procedure obtaining in England and hastened to provide amendments to the Federal Constitution which should prevent among them the oppression and injustice of English criminal proced-

ure, leading, as shown by the reasoning and recitals of the decision, to the adoption of the V and VI amendments to the Constitution. The decision is instructive as demonstrating the spirit of fairness towards the accused which these amendments were designed to secure. Whilst the questions in that case relate to the admissibility of certain evidence, the injustice of English criminal procedure and the reasons for the guarantees of the V and VI amendments, which were established to prevent their repetition here, are made manifest.

When this is considered, together with Mr. Madison's principle, that in interpreting the Constitution the evils it was intended to overcome, and benefits confer, should be kept in mind, it will be very clear that the amendment requiring the accused to be informed of the "CAUSE" of the accusation against him meant exactly what it says, and was placed in the supreme law as a guarantee to the humblest citizen that he would never be held to answer without full opportunity to prepare a defence to any charge made against him.

In *United States* v. *Walsh* (5 Dillon, 58) the question of the sufficiency of an indictment for conspiracy under section 5440 was directly involved. No case can be found which more clearly and more fully considers the question of conspiracy at common law, the effect of the English decisions thereon, the offence of conspiracy as charged by the statute (sec. 5440), and the entire lack of application thereto of the English decisions which deal with the subject of common-law conspiracy alone. The entire opinion, from beginning to end, fits the case at bar with absolute precision, and we earnestly invoke the Court's full examination thereof. It demonstrates both upon reason and authority, and with citation of many of the cases given *supra*, that upon an indictment for conspiracy

it is not sufficient (as under the English law) to make the general charge, but "that an indictment for conspiracy, "like all other indictments, 'must inform the defendant "'of the nature and cause of the accusation' (Const. U. "S., VI Amend.), and must set forth the offence with "clearness and certainty." When, therefore, this indictment fails to charge plaintiff in error Mulkey with commission of any act in anywise related to or connected with the alleged conspiracy, it is impossible to affirm that, within the plain meaning of the constitutional guarantees and the equally emphatic judicial declarations expounding them, he is charged with any crime whatsoever by this indictment. As to him, the indictment wholly fails to meet plain and fundamental requirements. From beginning to end it does not charge him with a single act which gives even the faintest color to the conclusion that he was in any manner connected with the conspiracy alleged.

Within the law he cannot be made to suffer that infamous punishment upon an indictment which gives him no possible suggestion or notice of place, circumstance, or ground upon which he is charged with the offence of conspiracy. He was compelled to go to trial within four days after pleading not guilty thereunder upon an indictment thus blind and vague to the last degree, and the whole power of a great Government was wielded against him without giving him any opportunity to know the facts charged against him or what he was required to meet. To uphold the judgment rendered against him under such circumstances would deprive him of his liberty without due process of law and subject him to all the pains and penalties prescribed by statute by reason of the infamous punishment which this judgment seeks to impose upon him.

Against this judgment and all its consequences of out-

lawry as inflicted by the law he may well believe that the guarantees of personal liberty accorded by the Constitution are to him a mockery, because the machinery of a great Government created thereunder has laid its powerful hand upon him; has instantly summoned him to answer an assumed indictment which does not even in remote degree acquaint him with the cause of the accusation, and seeks to inflict a punishment infamous in character.

This case illustrates in fullest degree the soundness of the observations made by De Tocqueville in his Democracy in America, when (page 347) he says:

"Another tendency, which is extremely natural to demo-
"cratic nations, and extremely dangerous, is that which
"leads them to despise and undervalue the rights of
"private persons. The attachment which men feel to a
"right, and the respect which they display for it, is gen-
"erally proportioned to its importance, or to the length
"of time during which they have enjoyed it. The rights
"of private persons among democratic nations are com-
"monly of small importance, of recent growth, and ex-
"tremely precarious; the consequence is that they are
"often sacrificed without regret, and almost always vio-
"lated without remorse.

"But it happens that at the same period and among the
"same nations in which men conceive a natural contempt
"for the rights of private persons the rights of society
"at large are naturally extended and consolidated; in
"other words, men become less attached to private rights
"at the very time at which it would be most necessary to
"retain and to defend what little remains of them. It is
"therefore most especially in the present democratic ages
"that the true friends of the liberty and the greatness of
"man ought constantly to be on the alert to prevent the
"power of government from lightly sacrificing the private
"rights of individuals to the general execution of its de-
"signs.

"At such times no citizen is so obscure that it is not "very dangerous to allow him to be oppressed—no "private rights are so unimportant that they can be sur- "rendered with impunity to the caprices of a government. "The reason is plain: if the private right of an individual "is violated at a time when the human mind is fully im- "pressed with the importance and the sanctity of such "rights, the injury done is confined to the individual whose "right is infringed; but to violate such a right, at the present "day, is deeply to corrupt the manners of the nation and "to put the whole community in jeopardy, because the "very notion of this kind of right constantly tends among "us to be impaired and lost."

We confidently submit that plaintiff in error Mulkey has not been charged with an offence in the manner and substance prescribed by the Constitution; that the verdict rendered upon such an indictment finds him guilty of no crime, and that the judgment sought to be entered thereunder against him is erroneous and should be reversed.

Respectfully submitted.

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156-464

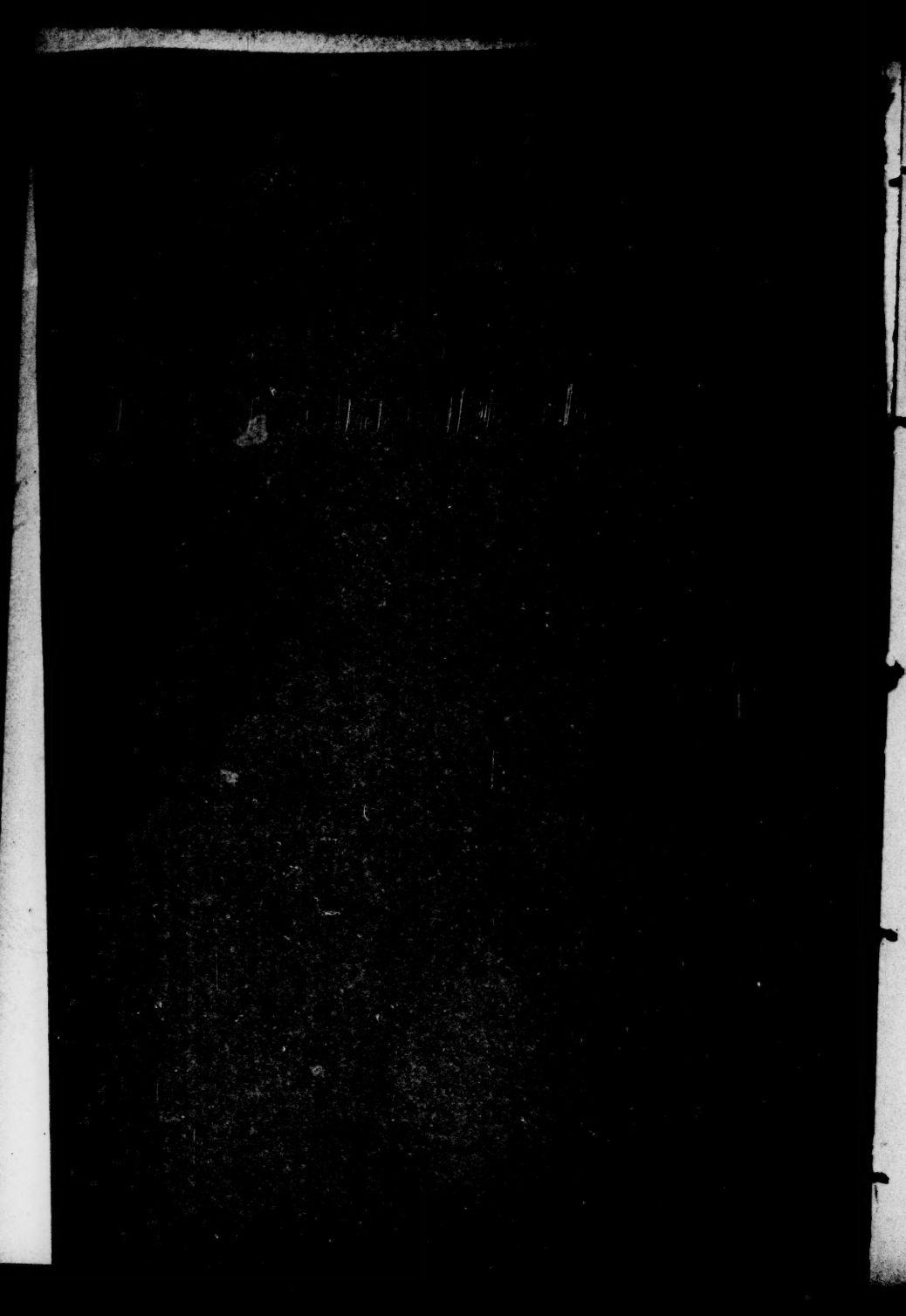
In the Supreme Court of the United States

OCTOBER TERM, 1904.

P. J. BANNON AND C. J. MULKEY, plaintiffs in error;
v.
THE UNITED STATES.
No. 307.

IN ERROR TO THE SUPREME COURT OF THE INDIAN TERRITORY.

BRIEF FOR THE UNITED STATES.



In the Supreme Court of the United States.

OCTOBER TERM, 1894.

P. J. BANNON AND C. J. MULKEY, plaintiffs in error, v. THE UNITED STATES. } No. 807.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE UNITED STATES.

Plaintiffs in error were convicted on July 17, 1894, p. 39, on an indictment charging them with a conspiracy to bring into the United States Chinese laborers not lawfully entitled to enter the United States, by furnishing said Chinese laborers false, fraudulent, and pretended evidences of identification, and by counseling, advising, and directing said Chinese laborers, and furnishing them information and advice touching the questions liable to be asked them upon their application for admission to land, and by various other means to the grand jury unknown,

in violation of the provisions of certain acts of Congress referred to in the indictment. The times, places, manner, and means of such conspiracy are fully set forth in the indictment.

The assignments of error will be found on pp. 45–54, and will here be considered in the order in which they appear.

I AND II.

These arise upon the judgment of the court in overruling the demurrer to the indictment.

Any argument in this brief on these assignments is made unnecessary by the exhaustive opinion of the court in overruling the demurrer, which will be found on pp. 26–34 of the record.

III AND IV.

These are upon the ground that the testimony before the jury was not sufficient to justify conviction. But as the testimony which was before that jury has not been certified here, and does not appear in this record, we have no means of ascertaining whether or not it was sufficient to justify conviction.

V.

This is to the action of the court in permitting one N. Blum to be sworn and examined as a witness on the part of the United States, and in overruling the defendants' objection to Blum's competency—

> Upon the ground and for the reason that prior to the date at which the said Blum was so offered as a witness he, the said Blum, had in the same court and

at the same term, and as a defendant in the same indictment with the other defendants then about to be tried, plead and confessed in open court that he was guilty, and was thereby convicted of the crime in said indictment charged (pp. 46, 59).

But this objection, too, is fully met by the judge in his opinion on page 33, in disposing of the motion for a new trial. He says:

> The rule is well settled that there must be a judgment of conviction pronounced by the court to have that effect. (Rapalje on Law of Witnesses, sec. 16; *Blanfus* v. *People*, 69 N. Y. 108.) And besides this, it is matter of doubt whether the charge to which witness pleaded guilty is punishable by imprisonment in the penitentiary, etc.

It appearing on page 59, in the bill of exceptions—

> That at the time said Blum is so called as a witness no judgment of the court imposing any sentence has been rendered or entered upon said plea of guilty.

VI, VII, VIII, IX, AND X.

These are all to the action of the court in overruling objections of defendants to questions propounded to N. Blum, who was produced and sworn as a witness and was being examined on part of the United States.

Blum had "turned State's evidence," and his testimony was very damaging to his confederates, the other defendants. But a careful examination of the grounds of the objections urged in these assignments of error to the questions does not seem to call for any special defense or vindication of the rulings of the court thereon.

XI.

To the action of the court in admitting certain Chinese certificates in evidence.

I do not find in the bill of exceptions any of the evidence relating to the introduction of these certificates. The court in its charge to the jury (pp. 64–73) refers frequently and at some length to the tendency of this class of proof; but neither the certificates themselves, nor any evidence relating to their admission, is imported into this case by the bill of exceptions.

XII.

In admitting the testimony of the witness William B. Gilbert, called on behalf of the United States.

It appears (p. 63) that one Seid Back, who was one of the defendants, had been examined as a witness, in his own behalf and in the course of his examination was asked several questions by the court; in the course of which the witness swore that he had been a court interpreter and had interpreted for Judge Deady, but denied positively that he had interpreted before Judge Gilbert, who was United States circuit judge for the ninth district. After this witness had left the witness stand the United States called to the stand Judge Gilbert, who testified that some *habeas corpus* cases of Chinamen had been heard before him. He was then asked the question:

> Do you remember who acted as interpreter in those cases?
>
> (Counsel for the defendants objected to the question as immaterial.)
>
> Ans. The first case I had Seid Back was interpreter.

The court, in commenting upon this matter (p. 64), said:

> I may say here that I asked the question not in any expectation that Judge Gilbert would be asked the question to contradict the witness, but I asked for my own satisfaction, because I was curious to know what answer he would make on that subject.

It is somewhat obscure from this statement which question asked by the court is referred to here by the judge. But there can be no doubt of the right of the Government to contradict the witness Seid Back upon any matter brought out by him as a witness in his own behalf, the tendency of which contradiction would be to enable the jury to form a correct estimate of the weight to be attached to the witness's testimony and veracity.

XIII AND XIV.

These two relate to certain portions of the charge delivered by the court to the jury.

That contained in XIV appears on page 74 to have been duly excepted to by counsel for defendants, but it nowhere appears that the extract contained in XIII was excepted to. It will be found in that portion of the charge which appears toward the bottom of page 65.

But whether excepted to or not, the charge was correct. As the judge states, it may not be unlawful in itself to bring Chinese laborers into the United States, but it is unlawful to land them here, and upon a charge against several of a conspiracy to violate these laws, the bringing of the Chinese laborers may be one of the links in the chain, or one of the meshes in the web of conspiracy,

which, when brought home to the conspirators, would be one of the overt acts required to show that the conspiracy had been carried into effect. And, so as to XIX. The facts referred to in that part of the charge acquire a character of illegality when shown to have been done pursuant to the conspiracy, which in themselves they did not otherwise possess.

The argument of the court (pp. 64–74) in its charge to the jury, and (26–34) on the motion for a new trial, really render any extended discussion of the questions there considered unnecessary in this brief.

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